



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 130

DATE: Wednesday, September 6th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



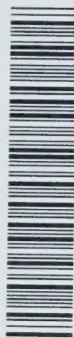
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, September 6th,
1989, commencing at 9:00 a.m.

VOLUME 130

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY.)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
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MR. P.R. CASSIDY)	ASSOCIATION
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MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
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MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

(iii)

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

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I N D E X O F E X H I B I T S

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1 ---Upon commencing at 9:10 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ms. Swenarchuk?

5

6 BRUCE ADAMSON,
7 SERGE TENAGLIA,
8 NEVILLE WARD,
9 GORDON PYZER,
10 DAVID M. HOGG, Resumed

11 CONTINUED CROSS-EXAMINATION BY MS. SWENARCHUK:

12 Q. Mr. Hogg, do you agree that with
13 respect to wildlife, road building and the resulting
14 access does have frequently a significant effect on
15 wildlife species?

16 MR. HOGG: A. Well, there's two aspects
17 to the question I think. One is the effect it might
18 have on habitat directly, and the other has to do with
19 the use that's made of that road particularly, and the
20 effect that that would have on wildlife.

21 I think, as I've said in my evidence --
22 in the witness statement, the greater effect
23 potentially is from the use of those roads. The
24 habitat effect exists, obviously, but is less given --
25 in terms of its scale anyway, in terms of amount of
land that's occupied by those roads.

Q. Okay. And picking up what you have

1 said about the use of the roads, would you agree with
2 this statement, that perhaps the most insidious effect
3 of forest roads is the provision of access to humans
4 who disturb sensitive wildlife? Poachers and off-road
5 vehicle operators, for example, gain access to back .
6 country areas by forest roads. Would you agree with
7 that?

8 A. It might be useful if I could have
9 the document you're reading from to take a look at.

10 Q. It's not a published document, but we
11 can go through it sentence-by sentence-and if you
12 disagree with the statements --

13 THE CHAIRMAN: Well, Ms. Swenarchuk, I
14 think in fairness he should know from what you're
15 reading.

16 MS. SWENARCHUK: It's a document prepared
17 by Dr. Ried F. Noss of Florida for the Wilderness
18 Society of the U.S. It's not a published document,
19 it's a very brief bibliographic survey with respect to
20 wildlife and road access.

21 I gave Mr. Hogg the published materials
22 we will be using. This is not a published document,
23 and that's why --

24 THE CHAIRMAN: But you are going to be
25 basing your questioning on that document; are you not?

1 MS. SWENARCHUK: A number of questions,
2 but they're general principles that have to do with
3 access effects on wildlife. It he doesn't agree with
4 the principles, I think he is free to say that, Mr.
5 Chairman.

6 THE CHAIRMAN: Well --

7 MS. SWENARCHUK: This is not a particular
8 study.

9 THE CHAIRMAN: I know, but are you then
10 going to use this document, after eliciting his
11 comments on the general principles, to put forward a
12 conclusion that is contained in that document, or try
13 and impune his evidence in some way using the document?

14 MS. SWENARCHUK: Not using this document.
15 We'll be referring to other articles -- published
16 articles, reviewed articles to which he has had access.

17 I'm referring to this document only
18 because it says more clearly than I could these general
19 principles with respect to road access.

20 THE CHAIRMAN: But that doesn't allow the
21 witness the opportunity of seeing the context in which
22 those principles are put; does it?

23 MS. SWENARCHUK: Well, I don't have any
24 objection to his seeing the document. I simply didn't
25 provide it to him because I'm not relying on the entire

1 document and was only using it, as I say, to speed up
2 the process by saying more clearly than I can say in my
3 own words what these principles are.

4 THE CHAIRMAN: Well, Ms. Blastorah,
5 what's your position on --

6 MS. BLASTORAH: Well, Mr. Chairman, it's
7 a little hard for me to take a position without having
8 seen the document. Again, it depends on what Ms.
9 Swenarchuk wants to do with it.

10 I sympathize with her position, but at
11 the same time clearly the statements are taken out of
12 some kind of a document prepared by an expert and I
13 think it's only fair for Mr. Hogg that he be allowed to
14 see the context of those statements.

15 And I have no idea what Ms. Swenarchuk's
16 intent may be with regard to using the document in her
17 own case, which is a concern as well.

18 MS. SWENARCHUK: It's not our intention
19 to use the document in our own case.

20 THE CHAIRMAN: Well, is it a lengthy
21 document?

22 MS. SWENARCHUK: It is about 12 pages
23 long. Could I have a moment?

24 ---Discussion off the record

25 THE CHAIRMAN: How many of the principles

1 in that document are you going to be referring to?

2 MS. SWENARCHUK: Three our four, Mr.
3 Chairman.

4 THE CHAIRMAN: All right. Why don't we
5 handle it this way: Why don't you ask your questions
6 based on these general principles, and you can give
7 whatever answers you are asked for in connection with
8 those questions, Mr. Hogg, and then provide him with a
9 copy of the document subsequently, and then if you wish
10 to amend your answers in any way because of the context
11 in which those principles were placed, you will be free
12 to do so.

13 MR. HOGG: Thank you, Mr. Chairman.

14 MS. SWENARCHUK: Q. Now, we are talking
15 about road aversion, Mr. Hogg. Would you agree that
16 road aversion can lead to displacement of animals from
17 otherwise suitable habitat?

18 MR. HOGG: A. Yes, I'd agree that there
19 is probably a species-specific response to that kind
20 of--

21 Q. Exactly.

22 A. --intrusion.

23 Q. And that it can lead to disruption of
24 normal movement patterns?

25 A. Yes, it could do that. Yes, given

1 the variation you might have and the nature of the road
2 itself and the kind of use that's made of that road,
3 traffic volume and that sort of thing.

4 Q. And that it could lead to
5 over-crowding in adjacent habitats?

6 A. I'm not so certain of that one, I
7 guess. If there's some displacement from -- where the
8 road is located and the animal is moving to a nearby
9 habitat, then you might expect some crowding, but I'm
10 not--

11 Q. You think that's what the author --

12 A. --convinced for sure that it would be
13 a significant problem.

14 Q. All right. And that - I think you
15 referred to this in your own evidence - can lead to
16 increased stress and mortality, mortality resulting
17 from the roads?

18 A. Mortality from road kills, yes.

19 Q. And isolation of populations of
20 animals that hesitate to cross roads?

21 A. There is some indication of that in
22 one of the papers I referred to in my witness
23 statement, having the small mammal movement being
24 inhibited by the width of the right-of-way.

25 Q. Right. And specifically -- I'm

1 moving off the article now, Mr. Chairman.

2 Specifically with respect to wolves,
3 would you agree that studies have shown that the
4 capacity of an area to sustain a breeding population of
5 wolves is inversely related to the density of roads,
6 and I'm referring here to the two articles that you
7 were provided, Thiel and Jensen?

8 A. As I read those articles, they do
9 draw a correlation between road density and the
10 abundance of wolves but, as I also read those articles
11 and others similar, the real impact of the roads is
12 human access.

13 Q. Yes.

14 A. As opposed to just the presence of
15 the road itself, per se.

16 Q. All right. I think I will distribute
17 the article so that the other people present have them.

18 MR. HUFF: (handed)

19 THE CHAIRMAN: Thank you.

20 Well, we will mark these Exhibit 783 for
21 the --

22 MS. SWENARCHUK: Mr. Chairman, the one
23 entitled: Relationship Between Road Densities and Wolf
24 Habitat Suitability in Wisconsin, the author is Thiel,
25 R.B. Thiel, T-h-i-e-l.

1 THE CHAIRMAN: Okay. That exhibit will
2 be 783 and the next one will be 784.

3 ---EXHIBIT NO. 783: Article entitled: Relationship
4 Between Road Densities and Wolf
Habitat Suitability in Wisconsin,
5 authored by R.B. Thiel.

6 ---EXHIBIT NO. 784: Article authored by Mr. Jensen.

7 MS. SWENARCHUK: I will give you a moment
8 to read at least the abstracts, Members of the Board.

9 Q. So you've had a chance to read the
10 articles, Mr. Hogg, and I agree with you that the
11 correlation appears to be drawn between the greater
12 access to the wolves and the greater hunting that
13 results, this access resulting from road construction.
14 Do you agree with that?

15 MR. HOGG: A. Yes. Basically the
16 correlation of the papers is between road density and
17 abundance of wolves, and then they list a number of
18 other factors that may be at play there in that
19 relationship.

20 And to my mind it's the use -- it's the
21 exploitation of, in this case, wolves that occurs as a
22 result of human access that probably has led to the
23 decline in abundance in these locations.

24 Q. Now, would you look at the Jensen
25 article, please, at page 365 and the discussion section

1 beginning at the bottom left-hand:

2 "Large tracts of wildland with low human
3 densities and minimal accessibility
4 must be available if a wolf population is
5 to be maintained or re-established in an
6 area. Quantitative evaluation of the
7 relationship between human activities and
8 wolf distribution is, therefore,
9 essential to management efforts."

10 Now, I take it, Mr. Hogg, that that type
11 of quantitative evaluation is not done currently by the
12 Ministry with relation to wolves in Ontario; is that
13 right?

14 A. There obviously is information about
15 wolf trapping results and hunting results, so that
16 aspect is there -- that quantitative information is
17 there.

18 Q. And is that -- well, can you indicate
19 for us whether there have been any particular
20 management strategies oriented towards protection of
21 the wolf population in Ontario within the area of the
22 undertaking?

23 A. If by protection strategies you're
24 talking of controls on the number of animals trapped or
25 shot; no, there hasn't been that kind of control put in

1 place as a management strategy at this point.

2 Q. And to your knowledge with respect to
3 road construction, has there been any control on road
4 construction or consideration paid to the effect of
5 road construction on wolf populations?

6 A. Not to my knowledge.

7 Q. And if we can look at another
8 species, Mr. Hogg, you were also provided --

9 THE CHAIRMAN: Just one moment, Ms.
10 Swenarchuk. Mr. Hogg, is there any problem with the
11 sustainable wolf population in Ontario, to your
12 knowledge?

13 MR. HOGG: To my knowledge, no, there is
14 not. There is what I think most of our staff in the
15 province would consider to be a healthy population of
16 wolves in the province. They are numerous, even in the
17 presence of the current road system and the use that's
18 made of that road system.

19 This particular article and the one that
20 precedes it, the Thiel article, talk about a limit of
21 .6 kilometres of road per kilometre squared as a
22 limit -- suggested limit for the number of roads in an
23 area where you may experience a decline in wolves.

24 And we don't have a lot of information
25 about road density per se, but in those areas where we

1 do have some information - and I'm thinking
2 specifically of an area in the Wawa District - I spoke
3 with someone up there who has been doing some work in
4 this in a related area and asked them what the road
5 density was in that area, and he has been studying it,
6 it's about 1.3 kilometres per kilometre squared and
7 there are still wolves in the area, there is still a
8 pack that uses the area and he considers wolves to be
9 common throughout that area.

10 To me that, again, stresses the fact that
11 they may have found this kind of correlation in these
12 studies between road abundance and decline of wolves,
13 but it very much depends on what kind of use is made of
14 those roads, how much hunting, how much trapping occurs
15 in conjunction with those roads.

16 So that the presence of roads, per se, is
17 not the problem. At some point, if we detected a
18 decline in wolves that was attributable to that kind of
19 use, we'd be faced with questions as to how to control
20 that use and an option might be the direct control of
21 trapping quota, the limits on what hunters can take,
22 and that would probably be the game management strategy
23 we would adopt.

24 That certainly has been the case where
25 we've detected problems, for example, with moose and

1 deer. We've attempted to control that perceived
2 problem through direct controls and the hunters as
3 opposed to closing roads or preventing access in an
4 area.

5 That possible strategy exists as an
6 option and it may be used at some point, but the
7 current policy and practice in the province today is to
8 control use in a more direct fashion rather than
9 indirectly through the use of roads -- corridors.

10 THE CHAIRMAN: Would the management of
11 wolves be different from any other animal in the sense
12 that if you do not detect any problem with the viable
13 population at large you may not put on any direct
14 controls at all?

15 In other words, what happens in a
16 specific area is not of as much concern to you as what
17 happens to the overall viable population across the
18 province? Is that the way you would manage for wolves
19 as well?

20 MR. HOGG: I would generally agree with
21 that. Now, I just -- there's a small caveat in that
22 there may be exceptional circumstances some time
23 someplace in the province that promises to do
24 differently and manage that local situation.

25 But generally what you have stated is

1 correct, we prefer to manage on the wider wildlife
2 management unit basis for all of the species and to
3 assess their viability on that wider basis.

4 THE CHAIRMAN: And to this point in time
5 you haven't detected any type of problem that would
6 necessitate any specific management strategies directed
7 at wolves?

8 MR. HOGG: And that's correct. And in
9 terms of getting a handle on what the wolf population
10 in the province is doing, it's routine during the
11 annual population surveys for moose, for instance, that
12 records are kept of wolf packs or tracks spotted.

13 And so that gives our people a measure,
14 some measure of certainly the distribution of wolves at
15 this point and trapping and hunting returns give us
16 some idea of how abundant they might be. An index of
17 abundance obviously, not an absolute count.

18 MS. SWENARCHUK: Q. Two questions,
19 Mr. --

20 MR. MARTEL: Could I ask a question? Is
21 there a sympathetic view in the province to wolves as
22 there is for, let's say, moose or deer in view of the
23 fact there have been efforts made to increase the hunt
24 to eliminate wolves around farming, et cetera, in the
25 province, or are we looking at wolves as closely and as

1 carefully as we should to keep the rates as high as we
2 would like to have them, or some people would like to
3 have them?

4 MR. HOGG: Well, I think in terms of
5 provincial interest we are interested in seeing wolves
6 as we are in seeing moose. Our management programs
7 obviously have been directed at things like moose and
8 deer over the years more so than some of these other
9 species, but that doesn't imply that they are less
10 important.

11 It means, to my mind, that we still
12 consider them important, that we want to see them
13 remain in viable numbers in the province and if
14 measures were needed to see that that does happen, they
15 would be taken. At this point those measures don't
16 seem to be necessary.

17 MS. SWENARCHUK: Q. Mr. Hogg, isn't it
18 true that for some time there has been a bounty on
19 wolves in Ontario?

20 MR. HOGG: A. There used to be.

21 Q. And it is being removed or, as I
22 understand it, the Ministry of Natural Resources and
23 the Ministry of Municipal Affairs have instructed
24 municipalities to revoke their wolf bounty by-laws by
25 the end of October of this year; is that not correct?

1 A. I'm not familiar with that. I do --
2 when I'm speaking -- when I say that bounties have
3 been -- there were bounties, there was a provincial
4 bounty back in the -- I'm not sure whether it would be
5 the early 70s, I guess, and it was removed and--

6 Q. And you don't know what's --

7 A. --certainly the situation you are
8 speaking of.

9 Q. You're not aware of that?

10 A. I'm aware that there were some
11 municipalities that, because of local pressures and
12 interest, were paying a bounty. I'm not sure what the
13 response of government has been to that situation.

14 Q. So you're not aware whether the
15 Ministry of Natural Resources has been involved in a
16 management strategy, shall we put it, to eliminate
17 those wolf bounty by-laws?

18 A. I've heard some discussions. I don't
19 know specifically what steps have been taken.

20 Q. All right.

21 A. I'm not involved in that area, I'm
22 afraid.

23 Q. All right. Now, just one more
24 question. You indicated that you had spoken to someone
25 in the Wawa area regarding road densities there and

1 wolves. Do you know over what time period or do you
2 know how long that road density has existed in that
3 area?

4 A. This is the Drea Road area, and Mr.
5 Tenaglia is from that area. I really can't speak to
6 your question, perhaps he can.

7 MR. TENAGLIA: A. I'm sorry, could you
8 repeat the question?

9 Q. Mr. Hogg indicated a specific road
10 density in the Wawa District was at 1.3 kilometres per
11 square kilometre and I'm simply asking for what period
12 of time that road density has existed and whether you
13 know that?

14 MS. TENAGLIA: A. That was particularly
15 in Doucett Township and it was for -- the harvesting in
16 that township started I believe in 1984 and it was
17 completed in 1987/88.

18 Q. So that's a relatively recent road
19 construction; is it, since '84?

20 A. Yes.

21 Q. Okay.

22 A. For the figures that Mr. Hogg quoted.

23 Q. Now, I would just like to refer back
24 to the Thiel article, Mr. Hogg. You will note that
25 this article which was published in '85 had to do with

1 an analysis of increase in road densities and wolf
2 habitat from 1926 to 1960.

3 Now, isn't it possible that it takes more
4 than about five years for increased road density to
5 show up in changed populations of wolves?

6 MR. HOGG: A. Well, I guess the point
7 I'd wish to stress is that it's not so much a matter of
8 how long the road has existed, it's a matter of people
9 using that road and --

10 Q. Granted. But the 1.3 kilometre per
11 square kilometre road over five years is a very short
12 time period to look at the effect of that increased
13 access on the wolf population; is it not, relative to
14 the length of time of road access that was being
15 examined in this article. Is that not correct?

16 A. I think I agree in general principle
17 with what you're saying. It's just the fact that the
18 road sits there in the Wawa District at whatever
19 density it does, 1.3, doesn't translate into problems
20 for wolves or bears or moose, per se.

21 Q. Within five years?

22 A. At this point.

23 Q. Right.

24 THE CHAIRMAN: Well, if it's not used,
25 even if the road sits there for a hundred years, it

1 really, what I understand you to be saying, depends on
2 the usage of the road?

3 MR. HOGG: Exactly right, yes.

4 THE CHAIRMAN: And so how can you
5 necessarily say that it will be a bigger problem 10
6 years down the road if it's still not used, in fact if
7 some of these tertiary roads are filling in by then?

8 MR. HOGG: In fact, I would not expect it
9 to be a problem unless those roads are use.

10 I am just -- simply saying, that I think
11 Mr. Swenarchuk is suggesting that at the present level
12 of use there's not a problem, and I agree with that.

13 And, in terms of future use, we can only
14 both speculate on that, but if the level of use is low
15 and human use of the area is low, we wouldn't expect to
16 see the kind of problems described in these papers that
17 she's asked me to review.

18 MS. SWENARCHUK: Q. Well, I guess I'm
19 looking at it this way, Mr. Hogg: Isn't it true that
20 road access into an area like this begins to open up
21 the area to human activities that weren't there
22 previous to the access, to the road construction?

23 MR. HOGG: A. It's reasonable to expect
24 increased use of an area once roads go into it.

25 Q. That's right.

1 A. And we've talked about that and we've
2 suggested as -- that we see a benefit in terms of
3 general game management to having an access in place in
4 most cases.

5 Q. And I'm simply putting the game
6 management question this way: That isn't it important
7 to evaluate the use of that road over a certain length
8 of time when we have scientific literature that
9 indicates that the increased use -- increased access to
10 an area over a long period of time, in this case about
11 40 years, is correlated with a decrease in wolf
12 populations?

13 A. I think this kind of information is
14 important in terms of perhaps waving a cautionary flag,
15 but the more important thing to monitor is not the road
16 density, per se, it is in fact what the wildlife are
17 doing out there, but in mind of those populations.

18 Q. Yes, I wasn't suggesting you monitor
19 just the density, but precisely that you monitor the
20 population.

21 Basically my point to you is that to have
22 no change in that population in five years, in my
23 view - and I'm asking you if you agree with this - is
24 not reassuring in the long term for those populations
25 unless you continue to monitor them, given that there

1 is scientific literature which indicates that this can
2 become a problem over time?

3 A. I agree that long-term information is
4 most useful and in the general case over the province
5 that's where the assessment -- judgment is being made
6 about the abundance of wolves; it's not being made just
7 in the Wawa District that they are common, but that's a
8 sentiment expressed by our staff across the province
9 working under many different situations.

10 So I agree that looking at things over
11 the long term and over the larger areas is most
12 important. Not that it's unimportant to look at the
13 small areas, but it's more important to look at larger
14 areas over a longer periods of time.

15 Q. Okay. Now, also with respect to
16 another effect associated with roads, Mr. Hogg, is it
17 not correct that road building is one of those
18 activities that opens up the forest canopy?

19 A. You mean --

20 Q. A corridor is cut through it?

21 A. Yes. When you put a road in place
22 you must open -- you must cut the trees down, yes.

23 Q. And that I think we heard earlier in
24 testimony that birds such as red-shouldered hawks,
25 which require large undisturbed areas, can diminish in

1 population when the canopy is opened and be replaced by
2 some species as -- such species as red-tailed hawks; is
3 that not correct?

4 A. I believe that information stems from
5 general forest management as opposed to road
6 construction. The idea of opening the canopy is
7 simply, it makes it more amenable for red-tails to use
8 the area and less for red-shoulders. The work that
9 that judgment is based on was done in woodlots in
10 southern Ontario, I believe.

11 Not to deny what you're saying that
12 opening the canopy, and perhaps in conjunction with the
13 road, may have an impact on nearby red-shouldered
14 hawks, but given that roads are linear in nature, I
15 would -- that kind of opening the canopy shouldn't be
16 disruptive to them in the way that, say, harvest might
17 be disruptive to them.

18 Q. But it is cutting up previously
19 undisturbed areas into smaller pockets; is it not?

20 A. It could have that effect in certain
21 locations on individual hawks and their territory.

22 Q. Right. And surely this is -- how is
23 this -- how is the really complete canopy opening of
24 road construction less damaging than the canopy opening
25 of selective harvest in the deciduous forest, Mr. Hogg?

1 A. Well, I guess what I'm saying is that
2 roads are linear in their nature and we do take efforts
3 to identify those raptor nests, red-shouldered hawk
4 nests and in the process avoid them with our roads and
5 minimize their impact in terms of our harvest on them.
6 That would be a routine occurrence in those areas where
7 red-shouldered hawks are found.

8 Q. Well, you may not put the road
9 through the tree with the nest, but what I'm suggesting
10 is that that kind of canopy opening in the vicinity of
11 a red-shouldered hawk may open the area to the other
12 types of hawks which then tend to displace the
13 red-shouldered hawk. Do you not agree with that?

14 A. I would agree that roads would
15 contribute to the disturbance of the area and these
16 things that are sensitive to disturbance.

17 Q. Are you familiar with the concept of
18 forest fragmentation, Mr. Hogg?

19 A. Yes, I believe I am.

20 Q. And to avoid the kind of argument
21 that we had a little while ago, how would you define
22 that?

23 A. The concept arises particularly from
24 studies done in the deciduous forest in the United
25 States looking at woodlock situations and it's simply

1 the idea that a forest that's left is in small
2 blocks -- may be in small blocks separated by a fairly
3 large distance and there are certain animals that
4 require larger blocks as opposed to smaller blocks of
5 forest.

6 Q. Right. And would you agree that
7 habitat frag -- forest fragmentation and habitat
8 fragmentation can be caused by road building?

9 A. I think the bigger impact is that of
10 harvest, that is what will create fragmentation of
11 habitat.

12 Q. So you don't think --

13 A. Like, the width of a corridor, you
14 know, a corridor passing through a forest is less
15 disruptive than would be, you know, harvest of a
16 hundred hectares to those things that are sensitive to
17 fragmentation habitat.

18 Q. So is it your position then that road
19 building does not contribute to forest and habitat
20 fragmentation?

21 A. I would say it's a very minor
22 contributor.

23 Q. Okay. Now, I am returning to the
24 article that we had discussed earlier, the Noss
25 article.

1 THE CHAIRMAN: Is this the article you
2 are going to be providing him with at some point?

3 MS. SWENARCHUK: Yes, yes.

4 MS. BLASTORAH: Sorry to interrupt.
5 Could I just get the spelling of that name?

6 MS. SWENARCHUK: N-o-s-s.

7 MS. BLASTORAH: Thank you.

8 MS. SWENARCHUK: Q. We will shorten
9 this. We talked about road aversion earlier, Mr. Hogg.
10 Has the Ministry done any studies of species within the
11 area of the undertaking to identify what species may
12 demonstrate this phenomenon of road aversion?

13 A. Not specifically. There is obviously
14 some information and literature about animals in
15 general that react -- how they react to roads.

16 Q. Mm-hmm.

17 A. But the Ministry has not done any
18 specific studies of Ontario wildlife per se in
19 Ontario's setting to document that effect. I think it
20 is accepted that it does occur.

21 Q. But in wildlife management within
22 area of the undertaking, the Ministry has not turned
23 particular attention to those animals which may
24 indicate this phenomenon?

25 A. Well, again, there are a number of

1 resource manuals that talk about that - I'm talking
2 about the various wildlife habitat resource manuals,
3 Mr. Chairman, that were introduced I believe in Panel
4 8, and there are a number of documents like that; those
5 that speak to, for instance, the bald eagles and osprey
6 and herons and caribou.

7 And within those documents you will find
8 some mention of this possible impact, this aversion
9 impact, if you will, on these animals, this disturbance
10 factor and recommendations are made that given a
11 nesting site you should pass so many metres away from
12 it when you either harvest, or with a disturbance such
13 as a road.

14 So, to that extent, this effect we are
15 speaking of on roads has been recognized in terms of
16 our management.

17 Q. Well, that's an interesting point.
18 Has the Ministry done any studies to demonstrate
19 whether the areas or the radius defined for these
20 species' protection is in fact effective?

21 After these guidelines have been
22 developed -- these resource manuals have been
23 developed, has the Ministry gone back and then studied
24 to whether or not in fact it has been effective in
25 protecting the population?

1 A. I think it's a matter of general
2 practice that when those things are put in place that
3 at some point after that measure has been taken, people
4 are out there monitoring what has actually happened.

5 For instance, there is a heronry that you
6 have tried to protect by placing a road somewhere in a
7 certain location, some note is made of the fact the
8 heronry still exists, is still occupied, the osprey
9 nest is still occupied.

10 The scientific, if you will, study that
11 you may be looking for has not been done.

12 Q. But you haven't looked at these
13 various species across the area of the undertaking to
14 assure that this really is effective; have you?

15 A. We do rely upon the literature and
16 work by various people in various, I guess, locations
17 in North America and elsewhere that are studying these
18 things, that if new information becomes available, that
19 kind of information would become incorporated into our
20 manuals.

21 But we aren't -- we don't have -- I mean,
22 I don't have people in the field at this instant
23 evaluating whether it should be a 200-metre buffer or
24 it should be a 150-metre buffer.

25 Q. Right. Just with respect to that

1 question of buffer distances - I'm sorry I don't have
2 the exhibit number - but I believe the Bald Eagle
3 Habitat Management Guidelines of 1987 from the Ministry
4 have been filed with the Board and they indicate a
5 200-metre to 800-metre radius around bald eagles'
6 nests. Are you familiar with that?

7 A. I think there is three zones, a
8 hundred and a 200 and an 800.

9 Q. Right. Okay, 100, 200 and 800,
10 whereas the U.S. Fish and Wildlife Service in a
11 publication entitled: The Regional Guide for the
12 Eastern Region, advocates a -- I believe it's
13 640-acres - I will just check this - 640 acres to be
14 the minimum habitat size for each bald eagle nest site
15 and it recommends large contiguous areas of habitat
16 should remain suitable, not just small specific sites
17 where nests currently are located.

18 So here's an area where the practice in
19 Ontario differs from that recommended in the U.S. Can
20 you tell us whether the Ministry has any data to
21 measure the effectiveness of these smaller radius that
22 are used for bald eagles in Ontario?

23 A. Well, for starters I'm not sure their
24 management is substantially different. I'm not sure
25 what 800 metre radius area translates into in terms of

1 acres and --

2 Q. But that's the maximum and you are
3 using smaller areas as well.

4 A. Well, the area which we are
5 suggesting that -- I think that it's kind of hard to
6 speak to this topic without having any of those
7 guidelines in front of me, but those guidelines do talk
8 about the need for large areas in conjunction with
9 water bodies, it talks about various levels of
10 disturbance in the zones appropriate to that.

11 Dr. Greer - perhaps Mr. Pyzer can help
12 me - where Dr. Greer works, but he's from the United
13 States, he's a recognized expert in bald eagle
14 management, if you will, and I am sure he had input to
15 that document you are reading from, the same way he had
16 input to our documents.

17 I don't think our management is
18 substantially different than what is being suggested in
19 what you read.

20 MS. BLASTORAH: Mr. Chairman, is Ms.
21 Swenarchuk going to file that document that she was
22 reading from? We don't have any evidence on the record
23 as to what the U.S. standard is that was put to the
24 witness and it's not confirmed, it's not evidence, and
25 he hasn't had a chance to see the guidelines apparently

1 that it was taken from.

2 MS. SWENARCHUK: I don't have it with me
3 but I will undertake to file it.

4 THE CHAIRMAN: Okay. Mr. Hogg, in these
5 guidelines where you have a provision that has so many
6 metres as a buffer zone, those in all cases would be
7 minimum not maximum; would they not?

8 In other words, you shall not build a
9 road within 600 metres but it doesn't, of course, mean
10 that you have to build the road at the 600-metre mark,
11 I mean, it could be a much larger buffer if you so
12 wished; is that not the case?

13 MR. HOGG: It can be a much larger
14 buffer, certainly. There may be instances where the
15 judgment is on the ground that perhaps even a smaller
16 area might be appropriate. For a particularly rugged
17 terrain and it's a cliff face and that sort of thing
18 nearby, it's conceivable that maybe an 800-metre buffer
19 as suggested isn't necessary.

20 So there is that kind of latitude, but
21 certainly those areas -- those buffers can be larger.

22 THE CHAIRMAN: When you are comparing
23 sort of a buffer zone in one jurisdiction with that in
24 another jurisdiction, you are looking in all cases at
25 what the minimum prescription is in order to make a

1 valid comparison, not the maximum--

2 MR. HOGG: Yes.

3 THE CHAIRMAN: --because there could be
4 any maximum.

5 MR. HOGG: Yes, The minimum should be
6 what is talked about.

7 MS. SWENARCHUK: Q. Well, are you aware
8 of management plans in Ontario which include protective
9 areas for bald eagles' nest that exceed 800-metre
10 radius, Mr. Hogg?

11 MR. HOGG: A. I am not, personally.

12 Q. I wonder if we could have an
13 undertaking that you will check that and get back to us
14 if there are any and indicate to me whether or not
15 there are any, please?

16 A. I am not sure of the size of
17 undertaking you are talking about, information with all
18 bald eagle area of concerns in the province and I am
19 not certain how large a task that is. It might be
20 substantial.

21 MS. BLASTORAH: Mr. Chairman, at face
22 value I would have to agree with Mr. Hogg. He
23 obviously has a better sense of this than I do, but it
24 sounds like a substantial undertaking to review every
25 area of concern prescription in the area of the

1 undertaking, and I don't know that that much value --

2 THE CHAIRMAN: Well, what really turns on
3 it if there were one or two that were higher and lower?

4 MS. SWENARCHUK: Well, Mr. Chairman, I
5 would be very surprised if there are any that are
6 higher. I think in fact that the 800-metre radius
7 functions as a maximum protective area.

8 But if we can recall, we have heard in
9 earlier testimony that bald eagles aren't that common
10 in the province, their locations are fairly well known,
11 I don't think that it in fact is a large task because
12 it's not a very common species.

13 But I think it's important to look at
14 whether in fact these resource manuals are used as
15 maximum protective areas and my understanding is that
16 essentially that is how they work. If that is not the
17 case, I think it's important to know this. I think
18 this is a species that is visible, high profile,
19 locations are probably well known, it's not that
20 prevalent and my guess is that it's not a particularly
21 difficult task.

22 THE CHAIRMAN: Well, Mr. Hogg, are you
23 aware personally of any that are in excess of 800
24 metres?

25 MR. HOGG: I'm not personally aware of

1 that, Mr. Chairman, no.

2 THE CHAIRMAN: Would you expect to find
3 any in excess?

4 MR. HOGG: It's going to be
5 site-specific. There might well be areas that are
6 larger than -- because of the nature of the terrain;
7 there may well be areas that are somewhat smaller.

8 MRS. KOVEN: How many of the areas would
9 you expect to be smaller than the -- is it 100-metre
10 minimum buffer?

11 MR. HOGG: I wouldn't expect to see any
12 smaller than that. That 100 metre is sort of a no
13 disturbance buffer zone and between 100 and 200 there
14 can be some disturbance, between 200 and 800 there can
15 be somewhat more, and beyond that we are suggesting
16 that routine activities could occur.

17 MS. SWENARCHUK: Mr. Chairman, what I am
18 asking is --

19 ---Discussion off the record

20 THE CHAIRMAN: Mr. Hogg, is the criteria
21 used for establishing the three zones that you
22 indicated 100, 200 and 800, described in the manual?

23 MR. HOGG: Yes, it is.

24 THE CHAIRMAN: And that manual that you
25 are referring to is before us; is that correct?

1 MR. HOGG: Yes, it is. It, in actual
2 fact, was part of Dr. Euler's evidence in the witness
3 statement, about page 809 in his evidence the manual is
4 inserted.

5 MR. MARTEL: Does it spell out the other
6 criteria you were talking about, for example, terrain
7 and so on, or does it just spell out the numbers?

8 MR. HOGG: It basically spells out the
9 numbers and says this kind of activity should not occur
10 in these areas.

11 MR. MARTEL: But it doesn't give any
12 description, Mr. Hogg, about the type of terrain you
13 are talking about which could reduce the various sizes
14 of the buffers?

15 MR. HOGG: I am just trying to leaf
16 through here to see if that information is part of it.
17 Certainly it's a fairly lengthy document, it speaks
18 about the habitat needs of bald eagles in general, and
19 that kind of information can be used by a biologist in
20 assessing his situation to determine whether or not the
21 animal is going to be adversely impacted by a road or a
22 harvest operation and make some judgment about whether
23 an 800-metre buffer is appropriate in that location or
24 maybe it's 700 or maybe it's a thousand.

25 I just -- I did find a reference in here

1 to the 640 acres that is talked about in our own
2 document, page 820 of Dr. Euler's evidence-in-chief in
3 Panel 10 -- his witness statement in Panel 10.

4 THE CHAIRMAN: Are the majority of the
5 buffer zones the 100 metre?

6 MR. HOGG: Excuse me, I am not sure I am
7 catching your question.

8 THE CHAIRMAN: Are the majority of the
9 buffer zones restricted to the minimum buffer zone
10 being a hundred metres?

11 MR. HOGG: It's a three-zone concept, you
12 can't separate any of the three zones. The hundred
13 metre is the no disturbance zone and between a hundred
14 and 200 metres there can be some disturbance, and a
15 little more in that area between 200 and 800.

16 So it's not -- we certainly would not
17 expect to see an 800-metre zone obliterated if you
18 will, nor would I expect to see the 200-metre zone
19 obliterated. I think if anything was to happen, it
20 would be an adjustment on that 800-metre circumference
21 we are talking about as opposed to any kind of change
22 in the 100 or 200-metre buffers.

23 THE CHAIRMAN: So what exactly do you
24 want, Ms. Swenarchuk, specifically?

25 MS. SWENARCHUK: I would like a survey of

1 management plans to indicate, following from your
2 question earlier, Mr. Chairman, whether there are any
3 management plans and, if so, how many on which there
4 are buffer zones around bald eagles' nests that exceed
5 800 metres?

6 MS. BLASTORAH: Mr. Chairman, I don't
7 want to belabour this and I am not sure and I don't
8 think even Mr. Hogg is sure how much work this is going
9 to be. I would only ask two questions, first of all,
10 or point out two things perhaps.

11 First of all, it's my understanding that
12 there is no evidence on the record at this point that
13 there is any question that the buffers that are in
14 place are adequate or not, so whether or not something
15 larger is being done, I don't know how helpful it is to
16 know whether something greater than what the minimum is
17 is being done, and I don't know that Mr. Hogg's
18 comments have indicated anything more than it might be
19 a possibility that something could be larger.

20 So to go out and undertake what appears
21 to be a lot of work to determine whether there might be
22 one situation where that has been done - and he's
23 already indicated it would be a site-specific
24 consideration - so whether it was appropriate in that
25 case or not, or whether it wasn't done in other cases

1 where it might have been done, we won't know any of
2 that from the answer that would be received to this
3 undertaking.

4 I am just not sure how helpful it is,
5 given the apparent amount of work that that would
6 entail.

7 MR. MARTEL: Well, if they are all areas
8 of concern that surround these nests, would it be
9 broken down district-by-district or broken down by
10 region or --

11 MS. SWENARCHUK: Can I just add --

12 MR. MARTEL: There might be a compilation
13 somewhere of the type of -- the numbers that you are --
14 areas of concern surrounding bald eagles I would think,
15 and Mr. Pyzer, of course, I guess has the largest
16 number in his part of the world.

17 MR. PYZER: In fact, I was going to
18 volunteer that what you may want to do is select one
19 management plan area that has a large number of bald
20 eagles, the Pakwash or Lake of the Woods or something
21 like that, and just zero in on one unit, take a look at
22 the area of concerns to see how they have been handled
23 for bald eagles.

24 MS. SWENARCHUK: Well, what if we asked
25 for all the management plans for -- the prescriptions

1 for bald eagles nests in the management plans in Mr.
2 Pyzer's district?

3 THE CHAIRMAN: Would that be a large
4 undertaking, Mr. Pyzer?

5 MR. PYZER: It would be about 1/47th of
6 the original, so we can do it. I'm sure we could do
7 it.

8 THE CHAIRMAN: All right.

9 MS. BLASTORAH: I think that is probably
10 more reasonable.

11 THE CHAIRMAN: All right. Why don't we
12 compromise on that basis. Would you undertake to
13 provide the prescriptions concerning bald eagles nests
14 within your management unit?

15 MR. PYZER: Yes.

16 MS. BLASTORAH: Could we just have the
17 undertaking restated by Ms. Swenarchuk again just so I
18 can get it straight.

19 MS. SWENARCHUK: What would be helpful
20 would be to have the prescriptions for all the areas of
21 concern relating to bald eagles nests for the
22 management plans within Mr. Pyzer's district.

23 MS. SWENARCHUK: Mr. Chairman, Mr.
24 McGibbon has been working with metres and acres and
25 tells us that an 800-metre radius translates into 158

1 acres.

2 MR. HOGG: And I would only point out
3 that the 640 acres I think you referred to in the
4 American plan there, I don't think necessarily a
5 buffer -- it was an area to be managed closely --
6 carefully as opposed to the buffer idea.

7 That is my interpretation, but I would
8 obviously have to look at the document.

9 MS. SWENARCHUK: Well, we'll get the
10 document, yes.

11 MS. BLASTORAH: And, Mr. Chairman, I rise
12 to point out that that figure is subject to
13 verification, of course.

14 MS. SWENARCHUK: Well, I have undertaken
15 to provide the document.

16 MS. BLASTORAH: Not that I distrust the
17 math that was done.

18 MS. SWENARCHUK: Q. Now, one further
19 wildlife impact of road building, Mr. Hogg. Would you
20 not agree that road building contributes edge within
21 the forest?

22 MR. HOGG: A. Yes, it contributes some
23 amount of edge, yes.

24 Q. And that creation of edge can lead to
25 species change in some instances; for example, that

1 newly created forest edge along roads can attract
2 animals that are not game species, including various
3 mammals and birds that prey upon the eggs and nestlings
4 of forest dwelling songbirds?

5 A. I think what you are referring to is
6 a fairly accepted phenomenon that when you have
7 concentrations of wildlife in a given location as you
8 do at an edge where you get these different kinds of
9 vegetation occurring, and then predators are also
10 attracted to those situations.

11 And that occurs at the edge of a cut, or
12 whatever its reason might be, for a road allowance, or
13 for just harvest purposes, or as a result of fire
14 passing through. Wherever a edge develops, you get
15 that kind of effect.

16 Q. Right. It attracts predators, and
17 would you not also agree that it attracts, in the case
18 of birds, some species that are parasite species such
19 as, for example, the brown-headed cowbird which lays
20 its eggs in the nests of other birds?

21 A. I guess I'm not familiar enough with
22 the brown-headed cowbird, but I would accept the
23 principle that things like that would happen, when you
24 change the habitat you expect different things --
25 different species to make use of the area and perhaps

1 some of them are parasitic.

2 THE CHAIRMAN: If this is a general
3 phenomena, Ms. Swenarchuk, what's the solution to
4 eliminate edge? I mean, obviously you can build no
5 roads that will eliminate some edges, but you can't
6 prevent all forest fires, you can't presumably prevent
7 any harvesting or all harvesting altogether, and if you
8 are not zeroing in on a problem with a particular
9 specie, what is the overall effect of recognition of
10 this type of phenomena?

11 MS. SWENARCHUK: Well, Mr. Chairman, the
12 next step was to look exactly at what species may be
13 affected by this phenomenon in Ontario, and I will just
14 put the question to Mr. Hogg and then come back to your
15 question.

16 Q. You had a chance to review the
17 article I gave you yesterday having to do with forest
18 fragmentation and it's effects on birds, Mr. Hogg?

19 MR. HOGG: A. Yes.

20 Q. And that article refers to the
21 vulnerability of warblers, vireos, thrushes, taningers
22 and flycatchers to parasitism by cowbirds; is that not
23 correct?

24 A. That is mentioned in the abstract,
25 yes.

1 MS. SWENARCHUK: Mr. Chairman, my
2 position on that would be that once you know that there
3 are species vulnerable to this kind of effect from road
4 building, in your consideration of both road building
5 and wildlife management, it would be our submission
6 that the wildlife management program should be
7 examining the effects of road building on those species
8 and then taking that into account in deciding when
9 roads are going to be built or whether, for example,
10 other management strategies are necessary for
11 protecting those populations.

12 THE CHAIRMAN: But is it not -- I guess
13 you and I are at odds over the point I was trying to
14 make. Is it not an impact from edge of any creation as
15 opposed to just edge created by road building?

16 MS. SWENARCHUK: Undoubtedly that is
17 true, Mr. Chairman.

18 THE CHAIRMAN: And I guess my question
19 is: How do you eliminate the creation of edge?

20 MS. SWENARCHUK: Well, one way that you
21 might eliminate the creation of this edge would be to
22 create some roadless areas or leave some roadless
23 areas.

24 In other words, when we are assessing the
25 impact of road building overall on wildlife, it will be

1 our position - and you will hear further argument on
2 this - that a little more analysis of the effects of
3 road building on various species is required than was
4 demonstrated, in my submission, the very general
5 article that Mr. Hogg submitted.

6 And we are simply attempting to bring to
7 his and your attention some of the species effects that
8 have been documented in other jurisdictions in various
9 cases applying to species that exist in this area of
10 the undertaking, and that those kinds of impacts must
11 be studied and understood before the forest managers
12 can assess adequately the actual impacts on wildlife
13 that their road building programs have.

14 THE CHAIRMAN: Well, okay. Mr. Hogg,
15 would you, in your professional opinion, be of the view
16 that these impacts to these various species, because of
17 the creation of edge, could occur in areas where there
18 are absolutely no roads whatsoever?

19 MR. HOGG: Absolutely, yes. That
20 certainly could -- I am sure it is the case.

21 THE CHAIRMAN: And could ostensibly you
22 have a situation where you have no roads but a rather
23 devastating fire come through in sort of a ragged
24 pattern creating a lot of edge, create some impacts
25 that would be harmful to particular species?

1 MR. HOGG: That kind of impact could
2 occur in that situation and edge occurs without
3 catastrophe, you know, every watercourse, every bald
4 nob in the province that doesn't have trees on it has
5 an edge attached to it and I think the more relevant
6 question is, is how are, in this case, the migratory
7 birds doing, given all these influences we have talked
8 about.

9 There may be an impact of cowbird
10 parasitism as a result of road activity, it may occur
11 as a result of cutting, or it may be just general
12 requirement for large areas and the area sensitivity
13 issue.

14 THE CHAIRMAN: I guess that is my basic
15 point. When you are looking at these things, do you
16 not really have to look at the overall viability of the
17 species per se from all causes as opposed to just
18 trying to zero in on a particular cause when you know
19 very well that these are susceptible to a wide variety
20 of impacts?

21 MR. HOGG: That I believe is the
22 Ministry's position, Mr. Chairman, yes.

23 MS. SWENARCHUK: Well, Mr. Chairman, if I
24 can just take you up on that, since you are raising the
25 issue yourself.

1 We, of course, don't disagree with that.
2 I am simply attempting to bring to your attention that
3 there are impacts from deliberately created human
4 disturbance which have effects on these species in
5 addition to all the types of disturbance to which they
6 are subjected by natural means.

7 And, to the extent that we are not able
8 to control the natural impacts to which they are
9 subjected, I quite agree with you, our position exactly
10 is that we need to know better what in fact is the
11 position with these populations across the province and
12 that perhaps then that has to have an impact on how
13 much further disturbance we deliberately subject them
14 to.

15 And with respect to the Ministry, the
16 repeated statement that we are concerned with viable
17 populations province-wide, in our view, is not an
18 adequate protective strategy unless in fact we have
19 sufficient data to assure that there are viable
20 populations province-wide and that is precisely why we
21 repeatedly asked what data is available for these
22 effects, so...

23 THE CHAIRMAN: But that gets down to the
24 bottom line concern of both yourself and, I would
25 suggest, the Board and; that is, are these species in

1 fact viable and are they being protected in a manner
2 which would keep them viable.

3 MR. HOGG: And Dr. Euler spoke to the
4 sorts of information available today and indicated that
5 we are improving our capability to monitor the
6 situation in future and we think that is the important
7 question.

8 It's very difficult to separate out, to
9 analyse any, except a very small-scale way, exactly
10 what is happening with the cause of declines and
11 increases throughout the province.

12 There is all kinds of factors at play,
13 parasitism and perhaps food shortages and disease and
14 general habitat situations and what is happening in the
15 migratory destination of these birds. And the first
16 thing that you have to do -- I think our first
17 responsibility is in fact to monitor the overall health
18 of the total population.

19 MS. SWENARCHUK: I just want to follow up
20 on some of these points to some extent in this article
21 that Mr. Hogg had an opportunity to see yesterday, Mr.
22 Chairman.

23 MS. BLASTORAH: Mr. Chairman, perhaps I
24 could just point out that the monitoring aspect, as we
25 know, is going to be followed up in Panel 16 and Ms.

1 Swenarchuk has stated their concern and I would just
2 refer her to our terms and conditions, specifically No.
3 57, and indicate that Dr. Euler will be back and this
4 will be discussed in Panel 16, the monitoring panel.

5 THE CHAIRMAN:- Okay. We are still
6 dealing with roads though, so I think to the extent
7 that Ms. Swenarchuk wants to ask questions about the
8 impact of roads--

9 MS. BLASTORAH: I have no problem with
10 that, Mr. Chairman.

11 THE CHAIRMAN: --that should be handled
12 in this panel.

13 MS. SWENARCHUK: The other issue that
14 arises with respect, Mr. Chairman --

15 THE CHAIRMAN: Should we admit this
16 document?

17 MS. SWENARCHUK: Yes, please.

18 THE CHAIRMAN: Okay. This will be
19 Exhibit 785.

20 MS. SWENARCHUK: This is the Robins
21 article.

22 ---EXHIBIT NO. 785: Article authored by Mr. Robins.

23 MS. SWENARCHUK: With respect to Ms.
24 Blastorah, could I just point out that another reason
25 why, in our submission - this is an issue that recurs

1 through the hearing - why it's important for me to hear
2 from Mr. Hogg some of his information about population
3 adequacy and monitoring, is that I think it's an
4 important means of measuring some of the statements
5 he's made in his own paper, and I think it's
6 appropriate that those questions be asked here rather
7 than in a general panel on monitoring.

8 Q. So, Mr. Hogg, you mentioned earlier
9 the concern with the fundamental question having to do
10 with such issues as parasitism, of course, is the state
11 of health of these migratory bird populations.

12 And do you agree with the statement
13 summarized in the abstract to this paper that with
14 regard to species such as enumerated; warblers, vireos,
15 thrushes, tanagers and flycatchers, these are
16 migratory species, insectivorous birds that spend more
17 than half the year in the Neo-tropics but migrate north
18 to the United States and Canada to rear their young.

19 You agree with that statement; do you?

20 MR. HOGG: A. I agree that birds are
21 migratory, yes.

22 Q. And that they are especially
23 vulnerable to predation and cobweb parasitism and are
24 unable to maintain their populations within 100 to 200
25 metres of forest edge?

1 A. That's the reason he's presenting, I
2 believe, for this classification of those kind of birds
3 as area sensitive, be in a larger area so they can get
4 more than a hundred, 200 metres edge -- distance from
5 the edge.

6 Q. Do you agree with the statement?
7 Does the Ministry agree?

8 A. Well, Dr. Euler spoke to area
9 sensitivity as a concern and he presented a bunch of
10 information about that. So, yes, there is
11 acknowledgment of this concern. The Ministry has this
12 concern about area sensitive species.

13 There's a list on - I can't remember the
14 page in his evidence that speaks to that -
15 approximately 40 species in the province that we will
16 consider to be sensitive in that respect.

17 Q. I believe there is a reference in the
18 article to the fact that the depletion of the tropical
19 forest is putting pressure on these populations during
20 their winter habitat and, therefore, in this author's
21 estimation it's that much more important that we take
22 some strategies to protect them in their summer habitat
23 which is the United States and Canada.

24 A. Yes, he expresses that thought.

25 MS. SWENARCHUK: Mr. Chairman, I just

1 thought you might like to know that there is some
2 relationship between this hearing and tropical forest
3 decline.

4 Those are my questions, Mr. Chairman.

5 THE CHAIRMAN: Thank you. Well, I think
6 it would be appropriate at this time to take the
7 morning break.

8 We will break for 20 minutes. Thank you.

9 ---Recess taken at 10:20 p.m.

10 ---On resuming at 11:00 a.m.

11 THE CHAIRMAN: Thank you. Be seated,
12 please.

13 MS. KLEER: Good morning. Okay. I would
14 like to start by introducing two interrogatories from
15 NAN. They are questions No. 3 and No. 7.

16 MS. BLASTORAH: I'm sorry, I wasn't aware
17 of the numbers before. Those have already been filed
18 in our Exhibit 688. I can give you the page
19 references.

20 THE CHAIRMAN: Mr. Tuer, did you get back
21 your 688?

22 MR. TUER: No, I didn't, Mr. Chairman.

23 THE CHAIRMAN: Here it is here, if you
24 like.

25 MS. KLEER: Those are pages 20 and 22 of

1 Exhibit 688.

2 THE CHAIRMAN: Thank you. (handed)

3 MR. TUER: Thank you.

4 CROSS-EXAMINATION BY MS. KLEER:

5 Q. Okay. My first question will be
6 directed to the panel in general, so someone can take
7 this question. I would like to first refer to
8 Interrogatory No. 3. Now, in the answer it states
9 that:

10 "In Document No. 5 there is no attempt to
11 assess the significance of the potential
12 socio-economic effects on native
13 communities because what may be
14 considered of minor significance to one
15 native community may be considered of
16 major significance to another, and
17 significance can really only be assessed
18 in direct consultation with the native
19 community involved at the time that
20 access is proposed."

21 Now, I take this to mean that issues
22 raised by native communities with respect to access are
23 dealt with on a case-by-case basis; is that correct?

24 MR. PYZER: A. Yes, that's correct.

25 Q. Mr. Pyzer, then does the Ministry not

1 have a formal system of procedures in place for dealing
2 with a native person or a native community's concerns
3 with respect to access?

4 A. Do we have a process in place?

5 Q. A formal process.

6 A. Yes, that would be the entire timber
7 management planning process that we're proposing, and
8 particularly the public consultation exercise.

9 Q. But there's nothing beyond that? Is
10 there anything specific with respect to native
11 communities? What I am referring to is, earlier on in
12 evidence --

13 A. Well, there are special sections
14 within the public consultation process that are unique
15 only to Indian communities. In other words, we go to
16 extra lengths to ensure that they're notified, we go to
17 extra lengths -- we do more in terms of contact, say,
18 than we would do for a white trapper or a white
19 fisherman. For an Indian community we do certain
20 things to ensure that they are contacted.

21 Q. And that applies across the board
22 then?

23 A. For Indian communities, that's
24 correct.

25 Q. Okay. So the entire extra procedures

1 that you deal with with respect to native communities
2 are addressed in the area of concern process within the
3 timber management planning process?

4 A. I'm not sure --

5 Q. Well, all I'm asking is: There is
6 nothing beyond the timber management planning process
7 that you use to garner the concerns of native
8 communities?

9 A. In terms of timber management
10 planning?

11 Q. Yes.

12 A. If I understand what you're saying,
13 no, no, there's...

14 Q. Okay. That's the full extent of it,
15 then?

16 A. With respect to timber management
17 planning, that's correct. You know, we have things
18 like -- obviously, the first one that pops to my mind
19 would be the Whitedog Agreement, and there are legal
20 requirements there that we have to do a number of
21 things prior to even issuing a land use permit.

22 Now, the implications of that on timber
23 management -- so we have legal implications relative to
24 to, say, the Whitedog Agreement, but -- with respect to
25 timber management planning, but that's another process,

1 and that would be outside of it.

2 Q. Okay, thank you. Okay, Mr. Pyzer,
3 the answer also states that:

4 "In preparing the list of socio-economic
5 effects in Table 14..."

6 Which is at page 424 of the witness
7 statement:

8 "...that the Ministry drew on staff
9 experience and knowledge to identify the
10 effects."

11 I believe that's contained in answer to
12 Question No. 3?

13 A. Yes, that's correct. We really --
14 and I wrote that. What I meant in the implication
15 obviously is that in preparing it I went to those
16 districts and field staff that deal with Indian
17 communities and Indian Bands relative to timber
18 management.

19 So to kind of -- I think I know where
20 you're leading - and if I'm not, you correct me - but
21 to that extent it also reflects Indian community input
22 and Indian, say, trapper, commercial fishermen because
23 the experience of our staff having dealt with that
24 through a timber management planning, by following the
25 process through, reflects what they have received in

1 terms of dealing with those local Indian communities.
2 So it reflects that input from that perspective.

3 Q. But when you spoke with the district
4 manager, dealing with one specific district manager -
5 and I'm not going to raise what the name is - would you
6 have asked them: How did you obtain your information?
7 Did you go directly to the native communities? Would
8 you have asked that of the district manager?

9 A. I asked them to go through the public
10 consultation processes which they had been involved in
11 which obviously would have dealt with Indian
12 communities and individual people, and I asked them to
13 reflect upon what they had received as input, and then
14 I asked them to go beyond that and say that, above and
15 beyond what you've received, are there any areas that
16 you think could be significant from a socio-economic
17 perspective which, although you may not have dealt
18 with, are potential things that we should be looking at
19 in terms of addressing those concerns.

20 Q. Okay. So you would confirm though
21 that you personally never contacted the native
22 communities directly on this -- in establishing this
23 table?

24 A. The writing up the -- no, no, that's
25 correct. Although, again, in my district we have 18

1 Indian communities, Indian reserves. And so in writing
2 it, I certainly reflected those discussions which I've
3 had with all those various Bands.

4 Q. I think this question may have been
5 asked before, but I will ask it of you. Did any of
6 these district managers that you consulted with in
7 compiling this table have expertise in socio-economic
8 impact assessment?

9 A. That's very difficult to answer. I'm
10 not sure what expertise means.

11 Q. Were they trained in obtaining
12 information to compile a socio-economic impact
13 assessment?

14 A. I don't know to be honest. I can
15 only speak for myself.

16 Q. Now, I believe this answer to
17 Question No. 3 also indicates that there is no attempt
18 in Document No. 5 to assess the significance of
19 impacts. At what point in the whole process will this
20 assessment be made?

21 A. It's -- you know, that's a good
22 question. It's very difficult to say it happened at
23 this point. I think the true answer is that it's
24 reflective of the process as you move through.

25 I can show you many examples where we

1 started in on an access road -- in fact, Mr. McGibbon
2 is probably familiar with Rawhide Road, in Sioux
3 Lookout District, where we start in with an Indian Band
4 in opposition to a road and we come out of it with an
5 Indian Band fully in support of it, and then when we
6 make a decision - and it doesn't happen necessarily to
7 be that one - but for whatever reason, let's say the
8 road wasn't built and you find yourself in a position a
9 year later or 15 months later defending the fact that
10 you're not going to build the road, and then the group
11 that you were dealing with at first was in opposition
12 and now is desirous of having the road built.

13 Lac Seul Indian Reserve, that's another
14 probably good one. Lac -- or I'm sorry, Lac la Croix
15 on the edge of Quetico Park. Lac la Croix
16 traditionally has opposed road access to the reserve
17 and, for whatever reason, very, very recently now wants
18 road access and we've done everything in our power in
19 terms of planning exercises to ensure that the
20 community stayed remote, but now they are very desirous
21 of having it and have asked us to speed up our process,
22 they've asked us to help them getting funds and they
23 have asked us in fact, where possible in terms of
24 timber management planning, to ensure that we would
25 route access roads to the community.

1 And now we find ourselves in the position
2 of not being able to move as fast as they would like us
3 to, so we're meeting with MND & M and some of the other
4 agencies to fund that.

5 I guess the only point I'm making is that
6 it's a very dynamic process and peoples' wants and
7 desires change and they change sometimes fairly
8 radically, and that's the reason why we -- I certainly
9 in writing it didn't want to say that -- I didn't want
10 to put that significance on it because, like I say,
11 sometimes they have been in opposition for a long
12 period, and, for good reasons I'm sure, that opinion
13 changes and I wouldn't want to be criticized for having
14 second guessed what a community wanted.

15 Q. Okay. Now, you've talked to some
16 length now about assessing these impacts and what I
17 would like to get from you is what type of system is
18 actually used to assess the impacts on a native
19 community? It is an economic evaluation, is it a
20 qualitative assessment?

21 A. I would hope that it's potentially
22 all of those, and I guess the answer to that is, what's
23 ever required and what's ever necessary to make that
24 final decision.

25 I can think of somewhere it has taken

1 very long, long involved processes where we've gone out
2 and potentially hired consultants or consultants have
3 been involved from one side or the other, has involved
4 many ministries, a long period of time, it's relied on
5 input from the Indian communities, it's relied on their
6 advice, their data, their perception of the issue.

7 Now, the assessment of that is through
8 the public consultation exercise because we bring other
9 information and data to bear on it. The Rawhide Road
10 example in Sioux Lookout where tourist operators were
11 in opposition to what was being proposed there, while
12 the Indian community was in support of it, mining
13 interests, having another bearing to play there, the
14 forest industry having another say in it, so all of
15 that was then brought to bear, you know, the
16 establishment of meetings, the bringing in of other
17 people, ensuring that the tourist operators were at
18 some of those meetings, ensuring that MTR had done the
19 economic profiles so that everybody could see what was
20 the potential impact on the tourist operators. It's
21 hard to answer those questions.

22 Q. So what you're saying then is in your
23 assessment you don't actually have a formal system, the
24 system is to take everybody's considerations into
25 account and come up with a --

1 A. That's right. It's problem-specific
2 because, you know, that's probably a worst-case
3 extreme. There are others, the Tide Road in my
4 district with Grassy Narrows Indian Reserve, they had a
5 specific request and we felt we could meet that very
6 easily, and we didn't do a great deal of assessment on
7 it. We were prepared to accept at face value the
8 information that they presented and we looked at the
9 economic statements relative to the Ball Lake
10 Reserve -- or Ball Lake Resort that they had just
11 purchased.

12 We were familiar with the economic
13 statements there, we were aware of the consultant's
14 reports that had been hired to look at the potential
15 economic benefits if and when that got up and running,
16 and we were prepared to close that road down fairly
17 quickly and satisfy their concerns. So there wasn't a
18 great need to go into additional work.

19 Q. Okay. Well, let me give you a
20 specific example. If you had a user conflict between a
21 person -- between a commercial fisheries interest--

22 A. Yes.

23 Q. --and a native fisheries interest,
24 and through the process of discussion with these groups
25 you could not come up with a solution that was

1 acceptable to both sides, what system is in place to
2 allow you to make a choice between those two users who
3 are in conflict?

4 A. That's probably a bad example because
5 you're talking about user groups that have allocations,
6 and I'm not sure how they would be in conflict.

7 For a commercial fisherman to be
8 operating he must have a quota, he can't just go and
9 commercially fish anywhere that he wants, he would have
10 to have a legal quota which is an allocation to him
11 and, in fact, if this Ministry would want that quota,
12 we in fact would have to buy him out before we could
13 affect him.

14 But taking another example -- maybe you
15 can think of a better one to give me.

16 Q. Well, I guess what I'm trying to get
17 at by using a specific example is: When you have a
18 user conflict - and we will not deal with the fisheries
19 conflict - but when you have a user's conflict that
20 can't be addressed through simple negotiations between
21 the parties, what in the end is your determinitive
22 factor; is it an economic factor?

23 A. Obviously that's an extreme -- you
24 know, when dealing at such a hypothetical level it's
25 very difficult to answer that because there's always

1 data and information available, and so whatever data
2 and information is there is weighed.

3 How -- you know, I'm not trying to be --
4 I really am trying to answer your question, but it's so
5 hard to deal with a hypothetical like that given the
6 amount of data and information that's usually
7 available.

8 Obviously there comes a point in time
9 though that you do have to make that decision and
10 through the public consultation process that decision
11 it laid out, the rationale for it is laid out, all of
12 the various methods by which we're prepared to mitigate
13 are laid out and it's taken at the public information
14 stage so that people can see in draft form what it is
15 that we are proposing, and if they still don't like it
16 they have the opportunity to come back and suggest
17 alternative approaches, suggest alternative data
18 collection or research or whatever and...

19 Q. Okay. Mr. McGibbon has provided me
20 with an example.

21 A. Okay.

22 Q. In the case of the user conflict
23 between the tourist outfitters--

24 A. Yes.

25 Q. --and the Indian Band involved in the

1 Rawhide Road proposal--

2 A. Yes.

3 Q. --how was that user conflict --
4 according to what system, rather, was that user
5 conflict finally dealt with?

6 A. Well, that's probably a really good
7 example because how it was dealt with was: Originally
8 only one user group was involved, at least according to
9 our perception, how the company was dealing with it and
10 tended to be dealing with the Indians at certain points
11 in time at least to the exclusion of some of the other
12 interest groups, and when we noticed that there were
13 several, several meetings involved both the company and
14 those various people, and I believe there were several
15 meetings actually involved between the tourist operator
16 and the Indian community.

17 And when you look at the Rawhide Road as
18 a good example, I believe that the solution at the end
19 wasn't one where they were in conflict. In fact, there
20 was then the opportunity to gate the road and I believe
21 at that point in time people would have been happy had
22 we in fact done that, but we questioned it from a
23 timber perspective why someone would propose building a
24 road through 25 miles of berm and not justifying the
25 amount of wood that was at the far end of it, and in

1 fact we said: Until there is better information
2 available, we are not prepared to see that road go
3 through and spend that kind of dollar -- those kinds of
4 dollars.

5 At the same time - gee, I missed the
6 point - a thought went through my mind and I missed it.
7 But that was basically the process.

8 And the other thing though -- yes, there
9 was. The Indian Band in our assessment had put forth
10 seven recommendations, seven conditions upon which they
11 wanted to see the operations go through, and I think
12 there was an assessment as well from the Ministry's
13 perspective that in talking to the company, in talking
14 to the Indian reserve that in fact the guarantees which
15 the Indian community thought they had in fact were not
16 there, and we felt very uncomfortable with them feeling
17 that they had some guarantees which we believed, having
18 talked to the company, weren't there either.

19 And so we were prepared to send the
20 company back to ensure that those guarantees in fact
21 became better solidified and better spelled out. But,
22 again, it was more that those forestry reasons the road
23 wasn't approved in any event, it was withdrawn by the
24 company.

25 MR. MARTEL: Would you say that was

1 primarily through discussion then?

2 MR. PYZER: I have the files here and I
3 think there's probably an inch to an inch and a half of
4 paper which represents solid meetings including the
5 Deputy Minister of Natural Resources, the Director of
6 Policy Planning Secretariate from Toronto, involving
7 the Regional Director, Deputy Regional Directors,
8 District Manager.

9 I would hesitate -- I know I'm safe
10 saying there were dozens and dozens of meetings, I
11 don't know if I'm safe saying there were hundreds and
12 hundreds.

13 MR. MARTEL: Well, each case would be
14 dealt with then on an individual basis and there would
15 be no set pattern?

16 MR. PYZER: Exactly. Again, the point I
17 would make now with the Tide Road that I'm more
18 familiar with in Kenora District where some of those
19 other concerns weren't there - although Mr. Hanna I'm
20 sure will have something to say about that next week -
21 we felt that the case that the Indian Band had made was
22 a very good one and we were prepared to gate that road
23 and close it, and we looked at the information they had
24 provided and we agreed with it. And that was -- that
25 involved probably one or two meetings and a couple of

1 requests and it was obviously fairly easy to deal with.

2 MS. KLEER: Q. I just have one further
3 question going to the Rawhide Road proposal. Would it
4 be possible for us to obtain on an undertaking copies
5 of the Ministry's review of the seven conditions that
6 the Indian Band put forward?

7 MR. PYZER: A. You know, I don't -- I
8 have a hard time answering that question not being the
9 district manager and not knowing what was there. I
10 simply -- you know, I'm simply talking about the
11 Rawhide from a general -- you know, in terms of your
12 question to me.

13 THE CHAIRMAN: Ms. Kleer, would there be
14 any sort of -- not breach of confidentiality, but would
15 there be a problem with the party with trying to
16 obtain, for instance, the party's consent to that kind
17 of documentation?

18 I take it it was -- even though we are
19 dealing with a public agency, some of these
20 negotiations work or don't work because the parties can
21 speak freely and amongst themselves. Is that not the
22 case, Mr. Pyzer?

23 MR. PYZER: Yes, absolutely.

24 THE CHAIRMAN: And there may or may not
25 be a problem with trying to release those kinds of

1 documents evidencing the discussions that took place at
2 the time without perhaps embarrassing some of the
3 parties.

4 MS. KLEER: Well, I guess this was
5 something that happened in the past. It is not as
6 though we are going to have a breach of confidentiality
7 at this point with respect to that particular
8 situation.

9 THE CHAIRMAN: Was it a community, an
10 Indian community represented by yourself?

11 MS. KLEER: Yes, it was.

12 THE CHAIRMAN: Well then, you could
13 certainly obtain any indication from your own client as
14 to whether they would have any objections to that kind
15 of documentation being produced.

16 MS. BLASTORAH: Mr. Chairman, I just have
17 one comment on that. First of all, since it is Ms.
18 Kleer's client I would think she could get the
19 information from her own client rather than by way of
20 undertaking.

21 THE CHAIRMAN: Right.

22 MS. BLASTORAH: And the other concern I
23 have is to produce that information in isolation I
24 think might be misrepresentative of the entire
25 negotiation process. It's only one example of what we

1 have been told is a site-specific process and it's only
2 part of one example because it's only the response for
3 a particular submission by one party. I have some
4 concerns about --

5 THE CHAIRMAN: Plus I think there is a
6 general difficulty or concern that the Board has that
7 when these negotiations on a site-specific basis take
8 place between native communities and the Ministry there
9 may have been an expectation that at least -- not that
10 the result would remain private or confidential, but at
11 least the surrounding negotiations would remain
12 confidential.

13 MS. KLEER: Well, I'm satisfied with
14 that. All I --

15 THE CHAIRMAN: We don't want to inhibit
16 future discussions in that sense.

17 MS. KLEER: All I would say though is
18 that we don't have the internal Ministry review
19 position, as Ms. Blastorah I think was suggesting that
20 we would have that documentation.

21 MS. BLASTORAH: Mr. Chairman, I didn't
22 mean to imply that. I was just indicating, first of
23 all, we don't know whether there was any kind of
24 written documentation.

25 Mr. Pyzer has indicated he doesn't have

1 that information at the present time, and I would think
2 that whatever the result of any internal discussions
3 within MNR would have been conveyed to the native
4 people involved, and I think that, in that sense, the
5 Ministry's response would be known to Ms. Kleer's
6 client.

7 THE CHAIRMAN: Well, why don't we leave
8 it on this basis: Why don't, Mr. Pyzer, you have some
9 discussions with the district manager in charge and,
10 Ms. Kleer, perhaps the two of you could work it out
11 without having to put that documentation on the public
12 record.

13 If, for some reason, you feel it is
14 necessary to do so, then why don't you reapply to the
15 Board and we will deal with it at that time.

16 MS. KLEER: Thank you.

17 Q. I just have one further question with
18 respect to a system of assessment. You've raised
19 several examples, one where the Indian's position was
20 in fact -- what they wanted was in fact given to them
21 and in another position they didn't get what they
22 wanted based upon a totality of the assessment.

23 Is it fair to say then that there is
24 really no certainty with respect to these negotiation
25 processes, given that it's a negotiation process and

1 there's no system by which these user conflicts will be
2 assessed, no quantitative system?

3 MR. PYZER: A. There is no set formula.
4 If that's what you are asking, is there a formula by
5 which decisions are made; you're right, there is no
6 formula.

7 Sometimes it takes very detailed, you
8 know, detailed studies before the decision can be made,
9 other times it doesn't. The test of that is the
10 test -- the social test at the end of the process and
11 the social test all the way through in terms of: Are
12 people happy with decisions.

13 And I think the bottom line is the social
14 test at the end in terms of: Have they been involved
15 with the process, have they been represented
16 throughout, and have they had the opportunity to
17 provide information, data, have they been able to -- if
18 there are conflicts between user groups, have they met
19 with those other user groups, have they understood what
20 their concerns were, has there been an opportunity to
21 provide alternatives and options, has the Ministry
22 listened to those alternatives and options, and
23 certainly anyone can question the decision and...

24 Q. I guess what I'm having problems with
25 is: How are they going to question a decision in the

1 end if they don't know the parameters by which the
2 decision is being made?

3 A. Well, that's what I'm saying, is that
4 by the end of the exercise you will in fact -- you
5 should in fact understand why that decision was made,
6 and whether it's an Indian community or anyone, I just
7 cannot believe that anyone would follow that system
8 through and then just take carte blanche a decision
9 which is totally -- which they are opposed to.

10 I think for certain they would want to
11 know why that decision was made of the district
12 manager, why did he make it, why didn't he consider
13 this. And I'm sure he would get -- that person or
14 individual or community would get an answer.

15 And I guess to that extent I'm saying
16 that it's incumbent on those other people to ask those
17 questions and I think it's reasonable to expect that
18 anyone would, and I think it's reasonable for a
19 district manager to give those answers to that person
20 as to why he made that decision and it's reasonable for
21 a district manager to assume that sometimes people
22 aren't going to like it and will appeal that either to
23 his boss, the regional director, or to the Assistant
24 Deputy Minister or to the Deputy Minister or to the
25 Minister or to request a bymp-up.

1 Q. Thank you. That will serve my
2 questions on that interrogatory.

3 Turning to Interrogatory 7(b), the
4 question was:

5 "Where tradeoffs are made between the
6 concerns of native people and those of
7 other stakeholders, provide examples of
8 the analysis and methodology used in
9 making the tradeoffs where these examples
10 apply to NAN communities."

11 And I'll just briefly read through the
12 answer:

13 "The methodology or approach used to
14 deal with matters raised in part 14 is
15 the public consultation process outlined
16 in the Class EA Document."

17 And then it goes on to talk about the
18 public consultation process.

19 In the answer no specific examples were
20 given of where these tradeoffs were made. Now, do I
21 take this to mean that there are no such specific
22 examples?

23 A. Well, again, I think we just -- all
24 of the ones we just talked about were those very sorts
25 of things. I think every area of concern that's ever

1 been identified by an Indian community is an example of
2 where tradeoffs were made for one party or the other,
3 the effect -- the Tide Lake example, the tradeoffs were
4 entirely in support of what the Indian people had
5 wanted there.

6 As I said, I'm sure Mr. Hanna next week
7 is going to ask me why we didn't make that decision in
8 favour of anglers and hunters, why we didn't make it in
9 favour of the tourist industry.

10 So every example where there was an area
11 of concern identified by an Indian community or an
12 Indian group, you can see that the tradeoffs, if you
13 will, by following through the process, following
14 through the decision, area of concern, where the
15 conflicts were with other parties.

16 So, yes, every one of those is an
17 example. I guess they're too numerous to mention.

18 Q. Okay. Thank you. I would like to
19 turn now to the table which is in the witness statement
20 and I would like to turn to page 424. One of the
21 mitigation measures which is indicated on page 424 --

22 A. I'm sorry, could you tell me the
23 page?

24 Q. It's page 424.

25 A. 424, yes.

1 Q. Okay. One of the mitigation measures
2 indicated at page 424 is:

3 "To plan road locations to optimize or
4 limit access to Indian reserves and
5 native communities..."

6 And I quote:

7 "...depending upon community wishes."

8 I may get the same answer back, but what
9 system is there in place to determine those community
10 wishes?

11 A. Yes, that is the last thing I would
12 want to try and do, is to second guess for an Indian
13 community whether they did or did not want access.
14 That is why the process -- that is why we contact them,
15 that is why we make that special effort in terms of
16 Indian communities above and beyond all other parties
17 to ensure that they get involved in the process.

18 And there are significant potential
19 values for some of the more remote areas that, in fact,
20 if they wish to be accessed, like the Lac la Croix,
21 like the New Slate Falls, like the Grassy Narrows or
22 any of those Bands, if that in fact is their desire, we
23 have some unique opportunities here to do it where they
24 can ride in on the coat tails of the timber management
25 planning exercise, the WOSFOP off Fenn Road in Fort

1 Frances District or the Stan Chicoumi Indian Reserve,
2 that's another example. And where those opportunities
3 exist, there is absolutely no reason at all why we
4 shouldn't take advantage of them.

5 But with 18 reserves in my district, I
6 would be the last person to try and second guess what
7 they want and --

8 Q. I am not asking you to do that.

9 A. No, no.

10 Q. If the native community -- well, I
11 trust that there is no guarantee though that if the
12 native community identifies their wish that that wish
13 is nonetheless granted?

14 A. That's correct, there is no guarantee
15 in this exercise that they are going to get what they
16 want or don't want.

17 Q. So you would agree with me that
18 Indian communities have no decision-making power--

19 A. No.

20 Q. --in terms of reaching an assessment?

21 A. That's correct, the Ministry makes
22 the decision.

23 Q. If you could, how would you describe
24 their role in the process; is it consultative, just in
25 a few words?

1 A. That's a good term, certainly
2 consultative, but - and, you know, you may disagree
3 with me on this - but my feeling is that for a number
4 of reasons we treat Indian communities very specially,
5 I certainly do in Kenora District, we do make a very
6 special effort to -- you can ask me why and I probably
7 can't explain why, but we do make a very special effort
8 to contact the Chief. I deal with some of the Chiefs
9 in my district far more than I deal with any other user
10 group. In fact, we tend to almost socialize together.

11 So it's consultative but we have -- we
12 are there looking for data, we are looking for
13 information, and I would stick my neck out to say
14 that - and, again, I am speaking from my own personal
15 experience - we probably go a little further with
16 Indian communities than we do any other group to try
17 and ensure that they are part of the process.

18 Q. The table indicates that the
19 Environmental Guidelines for Access Roads are to
20 operate as a measure to enhance, prevent, minimize,
21 mitigate or correct the socio-economic effects that are
22 listed in the left column.

23 Now, the guidelines make no specific
24 mention of native communities; is that correct?

25 A. That's correct.

1 Q. How then precisely do the guidelines
2 do any of those things; i.e., enhance, prevent,
3 mitigate with respect to effects on native communities?

4 A. Yeah. That's a good question. I
5 think in fact there was an interrogatory on it. I
6 don't recall it actually, what number it is right now,
7 but the answer somewhat simply is that, to the extent
8 that when we are dealing with Indian communities we are
9 really dealing with things like commercial fishing, we
10 are dealing with trapping, we're dealing with wildlife
11 values and basically everything that we have talked
12 about in the last couple of days or the last couple of
13 weeks, in terms of the potential effects of access
14 roads on fisheries or the potential effect on wildlife,
15 when those communities depend for either subsistence
16 purposes or commercial -- if they are commercial
17 trapping or commercial harvesting of fish, the
18 guidelines -- the Environmental Guidelines for Access
19 Roads and Water Crossings, to the extent that they
20 protect the habitat and protect the resource, has a
21 tremendous impact on the Indian community that depend
22 on those either from a socio-economic perspective or
23 from a subsistence.

24 So it's not -- the relationship is
25 somewhat indirect and that is what was meant. I didn't

1 mean to imply that there was a direct relationship.

2 Q. Well, if that direct -- if the link
3 is not made between the indirect impacts on the natives
4 and the direct impacts on habitat, can it be fairly
5 said that these will in fact operate as a mitigative
6 measure?

7 A. Oh, absolutely. I mean, the
8 mandatory standards are mandatory whether it's an
9 Indian community or not an Indian community.

10 All -- the various points that Mr. Ward
11 has made in terms of habitat protection from a fish
12 perspective, we wouldn't do more or less based on the
13 user. Our concern there is for the resource and we are
14 protecting that resource regardless of who may wind up
15 using it.

16 So I guess our perspective, our focus on
17 that is the resource and the indirect benefit is the
18 person who is using the resource and, in some of these
19 cases, happens to be an Indian individual or an Indian
20 community.

21 Q. Is any attempt made to assess how the
22 impact -- sorry, will any attempt be made to assess how
23 the impact of these guidelines affects native
24 communities, how the application of these guidelines
25 affects native communities?

1 A. That's a good question. I simply
2 can't answer it. That's a better question to ask of
3 the monitoring package. I don't know the answer to
4 that.

5 Q. I am a bit curious. When this
6 document was developed, I believe the evidence in
7 direct was that they chose not to deal with
8 socio-economic impacts. Why was that decision made?

9 A. I am sorry, I don't understand your
10 question.

11 Q. These guidelines deal solely with
12 impacts on the natural environment?

13 A. Oh, I understand. Yes, that's right.

14 Q. Are there not any mitigation measures
15 that a road constructor should be aware of in order to
16 mitigate socio-economic impacts as opposed to physical
17 impacts?

18 A. Again, I think the relationship - and
19 Mr. Adamson can speak to this - certainly the focus for
20 the environmental guidelines were from a construction
21 perspective and the linkage there was with the
22 fisheries people and with the wildlife people, and I
23 think what he meant by that - and I believe that was
24 comment that he made during direct evidence - that the
25 relationship is that indirect/direct that I'm talking

1 about.

2 We were looking at the effects of access
3 roads on habitat and on aquatic and terrestrial
4 environments and, to the extent that you protect those
5 and there is no impact, then there shouldn't be an
6 indirect impact in terms of socio-economic. If there
7 is, then you are right, then there would be a
8 corresponding socio-economic impact.

9 Q. How does the Ministry intend to
10 monitor compliance with private sector forest companies
11 with these guidelines?

12 A. Again, I believe that Panel 7 --

13 Q. That will be dealt with --

14 A. Panel...?

15 Q. 16.

16 A. 16.

17 Q. I have a few questions for Mr.
18 Tenaglia with respect to tertiary roads. I believe
19 that you have stated, Mr. Tenaglia, that it is possible
20 that a prescription for an area of concern could
21 prohibit the building of any roads, including tertiary
22 roads, within an area of concern; is that correct?

23 MR. TENAGLIA: A. Yes.

24 Q. What monitoring will the Ministry do
25 to determine if the forest company was complying with a

1 particular prescription with respect to a tertiary
2 road?

3 Let me go a little further. Would the
4 Ministry be present during the construction of a
5 tertiary road to monitor compliance with the
6 guidelines?

7 A. Certainly the Ministry is present
8 during monitoring of construction of tertiary roads and
9 they are being constructed in conjunction with the
10 harvest and we are continually monitoring the harvest
11 for utilization and for any other infraction.

12 Go ahead.

13 Q. Okay. So when a tertiary road is
14 being built, in fact the Ministry would be there to
15 observe the building of a tertiary road as well as a
16 primary and secondary road?

17 A. I can't guarantee that they are going
18 to be there specifically in the construction of any one
19 of those roads at a specific time.

20 During the -- certainly during the course
21 of the construction, especially FMA roads that would
22 have to be audited for payment, the Ministry staff
23 would certainly be present during and after
24 construction.

25 But tertiary roads, again, they are

1 generally built in conjunction with or just previous to
2 the harvest and the Ministry staff are very regularly
3 monitoring the harvest for utilization.

4 Q. But they are not there all the time;
5 that is fair to say, during the building of a tertiary
6 road. There is no system --

7 A. What do you mean by all the time?

8 Q. Well, let me ask you: I don't know
9 how long it takes to build a tertiary road, but does
10 the company notify you before they are going to build a
11 tertiary road and say: Okay, we are going to build it,
12 come on out and watch.

13 A. No, there is no need.

14 Q. Well, I suggest that there might be a
15 need if an area of concern prescription is that no
16 tertiary roads be built within an area.

17 A. I would suspect that that would be
18 monitored through the area inspection program.

19 Q. But it might be monitored after the
20 fact, they might come and say that a tertiary road was
21 incorrectly built into a particular area of concern; is
22 that possible?

23 A. Certainly, and that would be an
24 infraction under either the work permit or under the
25 Crown Timber Act and we would take appropriate action.

1 Q. Okay. One of the main reasons that
2 you have given for not identifying the location of
3 tertiary roads in the timber management plan is that
4 they are short term; is that correct?

5 A. Correct.

6 Q. And in short term you meant one to
7 five years?

8 A. Yes. That is just one of the
9 reasons.

10 Q. All right. Well, I'm a bit confused
11 because secondary roads also have, as their time
12 period, a period of one to five years; is that correct?

13 A. No, not the classification. Up to 15
14 years generally, secondary roads.

15 Q. I thought -- maybe I could look at a
16 transcript, Volume 118, pages 19760, I'm just -- I
17 thought that was your direct evidence, so I would like
18 to go back over that.

19 A. What page are you on?

20 Q. Sorry, I thought I had the correct
21 page. Perhaps you can confirm with me then. Is it not
22 in fact the case then that a secondary road is one to
23 five years, it goes up to 15 years?

24 A. Certainly that was what I indicated
25 in my direct and in the witness statement that the

1 secondary road classification would -- has identified a
2 secondary road to be in use generally for up to 15
3 years.

4 Q. One of the other reasons that you
5 stated for tertiary roads not being identified in the
6 timber management plan is that the environmental impact
7 of a tertiary road would be lesser than that for a
8 secondary road and primary road; is that correct?

9 A. Potentially yes. And, again, in
10 areas of normal operations, the potential impact of a
11 tertiary road is not regarded as significant.

12 THE CHAIRMAN: Mr. Tenaglia, isn't it the
13 case though that although you don't normally identify
14 tertiary roads in normal operating areas you may well
15 identify a tertiary road if it's going to be allowed to
16 be built in an area of concern in the plan, or you may
17 as well prohibit the building of tertiary roads or any
18 type of road within an area of concern?

19 MR. TENAGLIA: We certainly would
20 identify any restrictions on tertiary roads in areas of
21 concern or any conditions on any tertiary road that may
22 be built.

23 Generally we don't identify or we
24 don't -- it's not a requirement to identify the
25 location of tertiary roads, but that is not to say that

1 may not be a condition of operating in an area of
2 concern that, in fact, a company would have to identify
3 in very unique cases where that tertiary road may be in
4 order to protect that particular value.

5 THE CHAIRMAN: So the point is -- the
6 bottom line is, is that within an area of concern the
7 Ministry has a method and would be concerned about
8 monitoring any conditions applicable to the building of
9 roads within the area of concern?

10 MR. TENAGLIA: Absolutely, any condition
11 that we identify or any conditions to either the
12 harvest or the construction of tertiary roads.

13 THE CHAIRMAN: And then just following
14 from that, if you didn't identify any concerns
15 regarding tertiary roads, presumably you would then be
16 not operating near an area of concern, in the sense
17 that some value would not have been identified and,
18 therefore, you would be automatically within a normal
19 operating area?

20 MR. TENAGLIA: That's correct.

21 THE CHAIRMAN: So there wouldn't be an
22 impact on anybody because the value against which the
23 road could impact has not been identified?

24 MR. TENAGLIA: That's correct. And, as
25 you indicated, the area of concern or any particular

1 values would certainly be identified -- even if we
2 don't identify a tertiary road location, would be
3 identified in the area that we would be proposed to
4 harvest.

5 MR. MARTEL: Well, why wouldn't you then,
6 if you have an area of concern on a tertiary road, put
7 those tertiary roads on a map for public hearings as
8 opposed to putting them all, at least put those that
9 have an identified area on the use map which you are
10 going to have during the planning process, because, as
11 I understand it, you don't use -- you don't put
12 tertiary roads on any maps.

13 Why wouldn't you at least go the half
14 mile and put the tertiary road on that has an area of
15 concern in it so as to appease the public's concern?

16 MR. TENAGLIA: Again, we do identify the
17 conditions on those tertiary roads that would mitigate
18 any potential impact. And I go back to what I
19 indicated earlier, is that physical ability to really
20 determine where that tertiary road is going to be five
21 years hence, five years in a timber management plan

22 It's a physical impossibility because, as
23 I indicated, it's going to be that tractor operator
24 that is going to determine where that tertiary road is
25 going to be and the foreman in the field.

1 MR. PYZER: A. If I could just make an
2 analogy to understand. If you think of this entire
3 floor in the room here as being the area that we are
4 looking at in terms of planning, if in fact the
5 tertiary roads are not allowed anywhere where there is
6 red carpet because those are areas of concern and the
7 one area that people have no concerns about at all are
8 out in the centre here in the brown and there is not a
9 person that has a concern in there, what we are saying
10 is that the company would in fact -- and the decision
11 would be made that you cannot build a tertiary road on
12 red carpet and, if you do, the condition may be that
13 you are going to put something across it that has to
14 be -- if it's a cord, it has to be taped to the floor
15 with a certain type of cord and it has to be done in a
16 certain way.

17 But if you are going to build it in the
18 brown area and there no interest group has come forward
19 and said we have a concern there, we are saying that if
20 those impacts aren't there, then that's the area that
21 you can build it within.

22 MR. MARTEL: But you make my point for me
23 then.

24 MR. PYZER: All right.

25 MR. MARTEL: The only tertiary road that

1 you might want to identify on the map would be those
2 where there is an area of concern.

3 MR. PYZER: I think Mr. Tenaglia said
4 that in fact if the decision --

5 MR. MARTEL: He said it's part of the
6 plan, he didn't say it was on the map though.

7 I mean, the values map is the thing that
8 I think impresses people that it's all there, it's
9 concise, people are drawn to it, they know what to look
10 at. It seems to me that that focuses an area of
11 concern much more quickly than having to read through
12 all the documentation. That is the only point I am
13 trying to drive at.

14 MR. TENAGLIA: But we do, we certainly do
15 document in a table format, in a table that relates to
16 that values map what conditions would be imposed on
17 those particular areas of concern relative to tertiary
18 roads.

19 MS. KLEER: Q. But if someone comes
20 forward from a native group and comes to one of these
21 centres and looks at the values map and doesn't go to
22 the tables but looks at maps and he's got a particular
23 concern about a particular body of water where he
24 fishes, he's not going to see any representation that
25 there is a road that someone else might use to get out

1 to the same area where he regularly fishes because it's
2 not indicated on the map. Would that be fair to say?

3 MR. TENAGLIA: A. I guess there is a
4 real problem if somebody expects to come into a room
5 and look at a map and get everything off the map
6 without talking to the Ministry forester, the Ministry
7 biologist, the lands technician, the district planner,
8 district manager that may be in that meeting.

9 MR. PYZER: A. And you would see a
10 primary and secondary road that led very close to that
11 lake that had some concerns, because we are talking
12 about tertiary roads which are generally just basically
13 skid trails.

14 So in that the sale of the map that we
15 are dealing with, that primary, secondary road would be
16 very close to the lake and the immediate question that
17 everyone asks is -- in fact, they most generally assume
18 that it's the secondary road and the primary road which
19 are providing the access. That's what, as soon as they
20 see that, which the red flag goes up. They are really
21 not even worrying about the tertiary road. We then
22 indicate there could even be tertiary roads off that.

23 I think when you look at those maps you
24 do generally -- the concern is with that primary
25 secondary and it's the red flag that says, you know,

1 potentially that lake could be accessed.

2 Q. All right. I will leave the area of
3 tertiary roads for now.

4 I would like to look now to the area of
5 effects on Indian burial sites. An example was raised
6 in your direct evidence, Mr. Adamson, and you discussed
7 an example where a bridge was being built or was
8 planned to be built very close to or through a burial
9 site. I take it that was an Indian burial site?

10 MR. ADAMSON: A. Yes, it was.

11 Q. And what was the location of the site
12 geographically?

13 A. Geographically we prefer not to
14 indicate it at the request of Ministry of Citizenship
15 and Culture.

16 Q. Can you tell me which Band was
17 involved?

18 A. No, I can't but, again, I wouldn't be
19 in a position to deal with the engineering aspects of
20 the crossing. I am sure our district could tell you.

21 Q. Can you tell me who identified the
22 site?

23 A. A local resident identified it to our
24 survey groups.

25 Q. Was that local resident a native

1 person?

2 A. No.

3 Q. So no one from the Ministry of
4 Citizenship and Culture brought this to your attention?

5 A. No, they didn't and at that time that
6 predates the timber management planning process and
7 today, with this process, they would have the
8 opportunity to identify those areas ahead of time.

9 Q. Sorry, who would have that?

10 A. Ministry of Citizenship and Culture.

11 Q. So in this case had the Ministry of
12 Citizenship and Culture reviewed the road plans in
13 advance of the building of the roads?

14 A. In this case they had not, until the
15 concern was identified by a local resident and then
16 they became involved.

17 Q. Is there at present a memorandum of
18 understanding or some sort of arrangement between the
19 Ministry of Citizenship and Culture and the Ministry of
20 Natural Resources to allow them to assess in advance of
21 every road that is going to be constructed whether or
22 not there is a site there that the Ministry might be
23 concerned about?

24 A. I don't believe there is a written
25 understanding. There is in development a guideline for

1 the protection of heritage values and they are actively
2 involved in reviewing timber management plans, I
3 believe.

4 MR. TENAGLIA: A. We do, as a normal
5 routine, consult with Ministry of Culture and
6 Citizenship with respect to when the timber management
7 plans are going to be prepared and request public or
8 input from that organization.

9 Again, it's much like Mr. Pyzer was
10 saying, they are one of the particular stakeholders
11 that we contact -- that we make a point of contacting
12 and try to get input from.

13 Q. So that is done in every instance
14 then?

15 A. Yes, it is, in the preparation of
16 every timber management plan.

17 Q. In this particular instance then,
18 when the site was identified, who was notified of the
19 existence of that site, Ministry of Citizenship and
20 Culture?

21 MR. ADAMSON: A. The survey crews
22 working for our section notified us and I notified the
23 regional archaeologist for Citizenship and Culture.

24 Q. Was a medical officer of health
25 notified?

1 A. Not to my knowledge. There was no
2 disturbance of the burial mound, there was nothing done
3 to it.

4 Q. Okay. Mr. Pyzer, I believe you also
5 addressed this in your evidence. Unfortunately I seem
6 to have lost my reference. It's at page 20000 of the
7 transcript that you referred to this, to the example
8 that Mr. Adamson raised as well, and I am just going to
9 read a section:

10 "The preferred route had an Indian burial
11 ground associated with it and we chose
12 the second route and it was an
13 opportunity to avoid it, not have to look
14 at the mitigation. There was extra
15 expense involved in that. Someone could
16 argue whether that's a significant
17 expense or not, nevertheless, we chose
18 the more expensive route and avoided the
19 problem."

20 You suggest in your direct evidence that
21 some mitigation measures other than rerouting the road
22 could have been observed. What mitigation measures
23 would those be?

24 MR. PYZER: A. Without consulting with
25 Ministry of Citizenship and Culture, you know, in terms

1 of looking at the Cemetary Act and all those other
2 people that you discussed, I don't know. You know, we
3 didn't need to look at them because we chose another
4 route, so I don't know. In fact there may have been
5 none.

6 Q. There may have been no mitigation
7 measures?

8 A. That's correct. I don't know.
9 Again, you would have to take a look at it.
10 Sometimes - and we have dealt with Ministry of
11 Citizenship and Culture many, many times on items -
12 sometimes they have given us the request on a
13 particular site, and not necessarily a burial ground
14 obviously, but they have indicated that we delay the
15 construction or whatever activity was proposed
16 sometimes for a year or two years. And they are
17 satisfied with being able to put an archaeological
18 survey party in there and conduct an archaeological dig
19 and remove the artifacts and whatever, and then they
20 give us the go ahead afterwards now to proceed.

21 But essentially we leave that up to them
22 to advise us what the mitigation measures could and
23 should be.

24 Q. In this particular instance when it
25 was identified, was the Band contacted about this?

1 A. I would have to go back actually
2 because I don't believe this was one in my district,
3 this was another district which I had been referred to
4 and I don't know the answer to that, to be honest. I
5 could find out.

6 Q. I would like you to find out, if you
7 could?

8 A. Yes. Could you repeat the question
9 just so...

10 Q. Could you identify whether the Band
11 whose burial ground this was was in fact contacted once
12 it became aware?

13 A. Yeah, all right.

14 Q. And then, when you are asking that
15 question, I would also like to find out whether the
16 Band was consulted as to what should be done with
17 respect to that site?

18 A. Recognizing, of course, that if in
19 fact we were going to choose the alternative and that
20 had already been undertaken there was no need to look
21 at mitigation.

22 Q. That's fair.

23 A. Okay.

24 THE CHAIRMAN: Mr. Pyzer, from your
25 knowledge of how the Ministry of Culture and -- what is

1 it, Culture and Recreation?

2 MR. PYZER: Citizenship and Culture, I
3 think now.

4 THE CHAIRMAN: Citizenship and Culture
5 operates, would it be reasonable to assume that when
6 they identify a cultural value that the peoples to whom
7 that cultural value affects would not be aware of it?

8 MR. PYZER: Certainly they have
9 significant liaison with Indian communities. Like,
10 obviously some of the more significant examples would
11 be the burial grounds down at Fort Frances, the
12 Manitoulin Islands and they are very closely -- the
13 Manitou Rapids Indian Reserve and the Ministry of
14 Citizenship and Culture have worked together. In fact
15 at one point in time I believe it was looked at as
16 either a provincial and/or national park.

17 So in those kinds of situations they have
18 much, much more contact obviously than we would. So I
19 guess the answer to your question is, yes, they do.

20 THE CHAIRMAN: I mean, what I am saying
21 is: If you went to Citizenship and Culture and said:
22 Are there any native artifacts in a particular area, a
23 member of the public, could they do that and would they
24 get an answer from them?

25 MR. PYZER: I'm sorry, could you..?

1 THE CHAIRMAN: Could anybody walk into
2 the Ministry of Citizenship and Culture and ask on a
3 given location or a given geographic area are there any
4 artifacts of interest located in that area--

5 MR. PYZER: Yes.

6 THE CHAIRMAN: --and could they get that
7 kind of information?

8 MR. PYZER: Citizenship and Culture have
9 it, but in fact they do not give it out normally to the
10 average person walking in just from a confidentiality
11 perspective.

12 THE CHAIRMAN: Would they give it to the
13 group that--

14 MR. PYZER: I am sure they would to an
15 Indian reserve. I am not sure --

16 THE CHAIRMAN: --would be affected or is
17 likely to have some relationship to those artifacts?

18 MR. PYZER: That's correct.

19 MRS. KOVEN: But, of course, that is the
20 whole field of archaeology, that you don't know the
21 location of ruins and various ancient sites. I mean,
22 obviously --

23 MR. PYZER: Yes, that's right. What in
24 fact -- and we participated in one exercise, we
25 provided - I stand to be corrected on the total

1 amount - but I think it was about \$385,000 to the
2 Ministry of Citizenship and Culture up in the Red Lake
3 area to in fact go through. And they do have models,
4 predictive models in terms of where encampments are
5 likely to be, where they would have been for a various
6 number of reasons and they -- actually they are
7 somewhat confident in their predictability.

8 I would say though - and they can answer
9 this better than I - that they tend to error on the
10 conservative side. In my experience, dealing with the
11 Caution Lake Road as an example, they identified a
12 number of potential archaeological sites and in fact
13 red flagged them and it cost us - and I don't say this
14 in a pejorative sense at all - but it cost us a year to
15 two years' delay while they went in and looked at it to
16 come back to tell us that there was nothing there, go
17 ahead and do what you wanted to do.

18 So, again, I would say that they tend to
19 error - and error is the wrong word - but they tend to
20 be conservative and then we do what they ask us to do.

21 MS. KLEER: Q. I noted, Mr. Pyzer, that
22 when you were discussing this you mentioned that you
23 might have to look at the Cemetary Act. I take it that
24 the Cemetary Act applies to Indian burial sites?

25 MR. PYZER: A. I don't know. I know

1 Cemetary Act applies to cemeteries and the
2 interpretation of that. Obviously if we got into
3 building where we came across, you know, a road
4 construction, you obviously would cease work and then
5 obviously we would contact - and you have already
6 suggested - I guess the medical officer of health, MCC.

7 But, you know, I would get a legal
8 opinion quickly as to -- or direction as to where I
9 should go and who I should talk to if I unearthed a
10 skeleton.

11 Q. Well, I guess that's my question. If
12 the Ministry doesn't know at this point whether or not
13 the Cemeteries Act is going to apply --

14 A. Well, I'm sure they do. I'm just
15 saying I don't.

16 MS. BLASTORAH: Mr. Chairman, I think
17 that's a question of law and Mr. Pyzer has indicated he
18 would seek a legal opinion on that. That's not to say
19 that someone in the Ministry's legal department doesn't
20 know the answer to that, he has just indicated that he
21 can't offer an opinion.

22 MS. KLEER: Well, I guess my position is
23 though that if we -- if the Cemeteries Act applies,
24 then the Cemeteries Act creates certain procedures that
25 are to be followed in case a cemetery is identified and

1 bodies have been unearthed.

2 THE CHAIRMAN: Well, it is speculation at
3 this time whether or not the Cemeteries Act in fact
4 applies to native burial grounds.

5 MS. KLEER: Well, I'm suggesting that we
6 need an answer to that because if we don't know -- if
7 it does apply rather, then there are certain procedures
8 that the Cemeteries Act sets out that should be
9 followed, and I have not found in my review of the
10 guidelines or in my review of any of the evidence in
11 this panel that the Cemeteries Act procedures are going
12 to be followed by the Ministry.

13 MS. BLASTORAH: Well, Mr. Chairman, I
14 would just comment that if the Cemeteries Act applies
15 it applies and a provision would be followed. Whether
16 or not they are set out in the guidelines, it's
17 legislation, and I think to look to the guidelines to
18 tell you what to do when --

19 THE CHAIRMAN: All right. Well, just out
20 of curiosity, and it doesn't have to be an elaborate
21 investigation, but could you undertake, Ms. Blastorah,
22 just to advise the Board whether or not the Cemeteries
23 Act applies to native burial grounds?

24 That should be a relatively easy thing
25 from a legal point of view to ascertain hopefully

1 without going into any cases which may presently be
2 before the courts, et cetera.

3 MS. BLASTORAH: Perhaps I could put it
4 this way: I will undertake to inquire of the
5 Ministry's legal department as to whether they have an
6 opinion on that.

7 I have no familiarity with the Act myself
8 and I don't know whether it may be a site-specific
9 decision or something like that, so I would only add
10 that caveat, that there may circumstances where it does
11 and there may be circumstances where it doesn't.

12 THE CHAIRMAN: All right.

13 MS. BLASTORAH: I will seek the opinion
14 of the Ministry's legal department.

15 THE CHAIRMAN: Well, if there's an easy
16 answer, fine; if it is in some state of flux legally at
17 the moment, then perhaps we won't get into it at this
18 time.

19 MS. BLASTORAH: I will certainly make
20 efforts.

21 MS. SWENARCHUK: Mr. Chairman, wouldn't
22 it be useful just to know whether the -- what is the
23 Ministry's position on the issue and whether, in the
24 Ministry's view, it applies or not.

25 THE CHAIRMAN: Right.

1 MS. KLEER: That's what I'm trying to
2 get.

3 THE CHAIRMAN: Yes. Regardless of
4 whether or not the courts have ultimately determined
5 the legality one way or the other.

6 MS. BLASTORAH: Mr. Chairman, that's what
7 I've indicated, I will seek the Ministry's position on
8 that from their legal department.

9 THE CHAIRMAN: Very well. Thank you.

10 MS. KLEER: Q. I would just like to ask
11 you one further question related to this. When I look
12 at the environmental access guidelines there is a
13 section, Section 3 that begins at page 7 that deals
14 with applicable legislation.

15 It includes the Ontario Heritage Act but
16 it does not include the Cemeteries Act; is that
17 correct?

18 MR. PYZER: A. Mr. Adamson is the author
19 of this so maybe let him --

20 MR. ADAMSON: A. That's correct. We try
21 to flag special Acts that apply to roads that may
22 require permits that people may not be aware of, but
23 obviously there is many, many other legislation that
24 apply to access activities such as income tax and
25 retail sales tax and everything else.

1 Q. I guess I would suggest that if the
2 Cemeteries Act does apply - and that is going to be
3 checked - then perhaps that should be listed, since
4 that would have some relevance as to what would
5 actually be done on the grounds. Would you agree with
6 me that if that in fact is the case you would do that?

7 A. My response to that is that we
8 circulated draft copies of this document to your
9 clients and they had the opportunity to comment on its
10 final content and they chose not to comment on that
11 point.

12 MR. PYZER: A. If it did apply, though,
13 in terms of the rewrite of the guidelines, I would say
14 there's nothing wrong with including the Cemeteries Act
15 if it applied.

16 Q. All right. The Ontario Heritage Act
17 is referenced in the guidelines. Is that - perhaps I
18 shouldn't ask this question but I will - is that the
19 only protection that's afforded to Indian burial
20 grounds, or at this point you don't really know because
21 the Cemeteries Act may also apply?

22 MR. ADAMSON: A. Like, we're not in the
23 habit of excavating skeletons in burial mounds. I'm
24 not aware of any having occurred as part of timber
25 management, and certainly as Mr. Pyzer said, we would

1 seek legal advice immediately.

2 What is required though is a permit if
3 archaeological sites are altered, and I think that's a
4 more common occurrence, is that they aren't finding
5 skeletons, they're finding pottery, shards, remains of
6 Indian settlements, old portage routes on the -- canoe
7 routes, that sort of thing.

8 THE CHAIRMAN: If you did unearth a
9 skeleton or parts thereof, would you not be obliged to
10 contact the police, for instance, immediately?

11 MR. PYZER: Absolutely. You'd never --
12 you know, that was the point I guess I was trying to
13 make as well, is that we're not skilled enough to know
14 whether that would be someone who had been buried there
15 a year ago or a hundred thousand years ago. I imagine
16 most people would turn the machine off immediately and
17 call the OPP.

18 MR. ADAMSON: I'm not an expert in the
19 Cemeteries Act and I didn't want to say anything, but
20 on another project in Fort Frances dealing with a
21 cemetery there where there is erosion on the banks of
22 the Rainy River, we have been talking to the town, we
23 have been talking to the administrator of the
24 Cemeteries Act regarding the relocation of some graves
25 that are endangered by erosion and there are processes

1 in place and certainly it involves the medical officer
2 of health and there are legislative requirements to
3 serve notice and to notify any living relatives and
4 obtain permission.

5 MS. KLEER: Q. So as a matter of policy
6 the Ministry does in fact go through the processes
7 of --

8 MR. ADAMSON: A. We don't know legally
9 whether that Act applies to burial mounds and that will
10 be determined.

11 Q. With respect to the Ontario Heritage
12 Act, what procedures exist within the Ministry to
13 ensure that the permits that are required will be
14 sought; how is that accomplished?

15 A. Well, I think in my experience we
16 don't get directly involved in doing excavations,
17 they're undertaken by the archaeologists in Citizenship
18 and Culture. We may get involved in funding the work
19 but we don't actually undertake it ourselves.

20 Q. So neither the Ministry nor the
21 forest company would get involved in that is what
22 you're saying?

23 A. I'm not aware of it.

24 Q. Now, in part 14 at page 431 of the
25 witness statement, one of the mitigation measures

1 indicated is that:

2 "The MCC should be encouraged to complete
3 archaeological assessments within access
4 road corridors."

5 I'm a little bit concerned with the word
6 encourage. What does encourage mean, is it of a
7 necessity, is it done in every instance; what is the
8 Ministry's policy?

9 MR. PYZER: A. We have no policy there.
10 I suppose to the extent that we were -- we don't tell
11 MCC how to do their job, we consult with them and...

12 Q. Do you consult with them on every
13 road that is going to be built?

14 A. Every timber management plan they are
15 notified and they are aware of everything that is
16 contained within that timber management plan. I
17 probably erred in how I wrote that.

18 Q. So basically they are only given
19 notice and they are not consulted specifically, or are
20 they consulted specifically with respect to roads prior
21 to a road being built?

22 A. They are the group that we consult
23 with. You know, I'm a little confused with the
24 question because obviously that's their mandate and
25 their responsibility to manage that resource and...

1 Q. I agree. But if they're not -- they
2 have to have an opportunity to go in and--

3 A. Yes.

4 Q. --assess the road corridor?

5 A. And my experience is that if they
6 don't -- if they haven't done that and they require the
7 time to do it, that's the condition they put on us.

8 The example that I used on the Caution
9 Lake Road, on that they clearly indicated to us that
10 they believed that there was the potential for
11 encampment areas, in fact there were two creeks that we
12 had to cross, and they notified us that that potential
13 existed and they indicated that in fact they had not
14 carried out the survey and the condition -- or what
15 they asked of us, in fact insisted, was that we not --
16 they allowed us to build the road up to the two
17 crossings, they allowed us to cross at a certain period
18 of the year - and this happened to be in the winter
19 time - just to take equipment across the creek and go
20 to the other side.

21 They put restrictions in terms of the
22 amount of area we could work in the creek and then they
23 carried out their assessment and it was not before they
24 had completed that assessment and again told us that
25 there was nothing there afterwards that they gave us

1 the go-ahead to then -- and that was a condition that
2 was written into the timber management plan.

3 THE CHAIRMAN: Mr. Pyzer, is a
4 representative of MCC on the interdisciplinary planning
5 team usually?

6 MR. PYZER: No, not usually. Although --
7 no, the answer is, usually no, but when we do these
8 sorts of things - and again I come back to the Caution
9 Lake - we've had several of them.

10 A Pow-Wow site that Grassy Narrows
11 identified on Keys Lake, a spirit rock, and we then
12 immediately seek out MCC and then we deal -- tend to
13 deal one-on-one with those site-specific issues with
14 the low resident archaeologist. So we tend then to go
15 into great depth on those particular issues outside of
16 the process and then reflect them back in.

17 MS. KLEER: Q. I just want to be sure.
18 There is, however, no actual memorandum of
19 understanding or written policy that applies between
20 the Ministry of Natural Resources and the Ministry of
21 Citizenship and Culture to govern the MCC's role in
22 this whole process of road alignment?

23 MR. PYZER: A. Mr. Tenaglia has a copy
24 there of -- and I believe it's part of the Class EA
25 Document that compels us to do that, but I'll let him

1 speak to it.

2 MR. TENAGLIA: A. I don't -- I'm not
3 aware of a particular memorandum that commits the MCC
4 to get involved. It's just -- again, it's our
5 commitment to ensure that they are notified of all the
6 different planning stages within the timber management
7 planning process so they can get involved.

8 THE CHAIRMAN: Well, with respect to the
9 Class Environmental Assessment for Road Access, which
10 has already been approved, is it a condition of that
11 assessment that you do so notify MCC?

12 MR. PYZER: Yes. I believe it is, as I
13 believe in this one that we are -- I believe it's - and
14 I'll have to go back and check - but I believe that you
15 do have to contact those other ministries.

16 THE CHAIRMAN: So that is a condition of
17 approval, in effect?

18 MR. PYZER: Again, I'd have to check that
19 to be certain.

20 THE CHAIRMAN: So would that not suffice,
21 Ms. Kleer, in place of a memorandum of understanding if
22 MNR is under a clear obligation pursuant to a condition
23 of approval?

24 I am not talking about the present EA in
25 front of us necessarily, obviously that hasn't been

1 decided yet, but in one that has been decided dealing
2 with road access, if there is such a condition of
3 approval, would that not take the place of a memorandum
4 of understanding?

5 MS. KLEER: It may, it depends what the
6 memorandum of understanding says.

7 MS. BLASTORAH: Mr. Chairman, I'm advised
8 that it is in the approved Class EA for roads and I
9 believe it's in the EA, that provision is in here. I
10 just can't put my fingers on it at the moment.

11 THE CHAIRMAN: Well, perhaps you could
12 consult with Ms. Blastorah as to the wording of the
13 condition in the approved Class EA.

14 MS. KLEER: Q. I have a few questions
15 about forest use management strategies -- or sorry,
16 future use management strategies. Are these strategies
17 developed by consensus or are they developed by the
18 Ministry after consultation with the different
19 stakeholders?

20 MR. TENAGLIA: A. Generally by
21 consensus. We have to recognize that in some cases
22 there may very well be one or two stakeholders that
23 will not be satisfied with the -- what the use
24 management strategy indicates and their interests may
25 not be protected.

1 Q. So in that case would the Ministry
2 make the final decision?

3 A. Yes, and there is provisions in
4 Document 4, as indicated in Document 4 for a bump-up
5 provision if a particular stakeholder is not satisfied
6 with the decision.

7 Q. Can the future use management
8 strategy be developed after the timber management plan
9 is in place or must it be done within the timber
10 management planning process?

11 A. The process calls for it to be done
12 during the preparation of the timber management plan.

13 Q. If there were to be a change to a
14 future use management strategy, can you say
15 categorically whether that would be a major or a minor
16 amendment?

17 MR. PYZER: A. It would be
18 site-specific, it would be interest group-specific, it
19 would depend on the problem and the issue and how many
20 people had been involved in that in the past. It would
21 be difficult to say.

22 Q. So it is site-specific?

23 A. That's correct.

24 MR. TENAGLIA: A. It depends on how
25 significant the change in the use management strategy

1 may be. It may be very insignificant and in so doing
2 it may just be an administrative amendment.

3 If it's significant, if it means taking a
4 gate off a road and opening up an area, it certainly
5 would probably be a major amendment requiring further
6 public consultation. But, again, it's very
7 site-specific.

8 Q. Mr. Pyzer, you referred in the
9 context of discussing the future use management
10 strategies to the Lac Seul ferry proposal?

11 MR. PYZER: A. Yes.

12 Q. And you called it a good example, if
13 I recall. Now, I believe that last evidence that the
14 Board has heard on this - and I'm seeking
15 clarification - is that the agreement had not actually
16 been reached, and is that still your understanding?

17 A. The agreement -- my understanding is
18 that there are some funding problems - and I may be
19 mistaken on this, I'm going - but I believe they were
20 federal government funding problems, but I don't know
21 whether -- I don't know the stage of that. Again, I
22 can check and find out for you.

23 Q. So when you gave your example -- gave
24 that example as a good example you really didn't have
25 full knowledge of what stage it is at at present?

1 A. I had full knowledge as of that day
2 when I talked to the district. I don't know what's
3 happened since.

4 Q. Mr. Pyzer, you also gave the example
5 of the Whitefish Band's request for access to a closed
6 road. Is it the Ministry's policy that whenever a
7 request is made by an Indian Band for use of a closed
8 access road that that request would be granted?

9 A. It's certainly not our policy.
10 However, I would go so far as to say that - and I think
11 I indicated this previously - that the input from an
12 Indian community relative to those kinds of concerns in
13 reality is probably given more weight than any other
14 interest group.

15 But I can't say that it is the policy of
16 the Ministry that every time an Indian community asks
17 for a road to be closed that it would be closed.

18 Q. Can you think of any circumstances
19 where --

20 THE CHAIRMAN: No, I thought the question
21 was the other way around; was it not? That is it
22 policy that where an Indian Band requests access to a
23 closed road--

24 MR. PYZER: Oh, I'm sorry.

25 THE CHAIRMAN: --that it would be granted

1 in every case?

2 MS. KLEER: Sorry.

3 MR. PYZER: Oh, gee, I'm glad you
4 clarified that. I can't think of any examples where we
5 have denied that for economic -- for general economic
6 development type of harvesting activity.

7 If it's to recreate -- for an Indian
8 person to go down that road and recreate and fish, then
9 they would likely be defied the approval if it was
10 protecting some other value; but if it was an Indian
11 trapper, an Indian commercial fisherman, an Indian wild
12 rice harvester, in terms of an economic operation down
13 that road, I cannot think of any occasions when we
14 would deny it.

15 MS. KLEER: Q. So would it be fair to say
16 that if it were an economic use that they were
17 requesting rather than a recreational use that that
18 would be granted in every case?

19 MR. PYZER: A. Again, I can't say -- and
20 obviously there is not a policy, but that would be the
21 practice, yes. Generally that's correct.

22 THE CHAIRMAN: And that would include
23 subsistence use as well; would it not?

24 MR. PYZER: Subsistence is a -- would
25 possibly be a little different because it's hard to

1 separate the recreational angling from subsistence
2 angling.

3 MS. KLEER: Q. If they told you it was
4 for subsistence uses though, what would be the
5 practice?

6 MR. PYZER: A. Well, then we would
7 have -- I would want to know what subsistence use
8 meant. If there was a thousand people on the reserve
9 and what we were being asked is that any member -- any
10 one of those one thousand could at any point in time
11 drive down the road, access the lake, or shoot animals
12 off it, I would suggest that that -- we possibly could
13 have some problems.

14 If it was a particular lake which they
15 used and they were going to do down and they were going
16 to be gill netting and supplying -- two or three people
17 were supplying a community freezer with fish, that
18 would be a different situation. One would have to see
19 the case.

20 And I do have that in terms of direction
21 to the Ministry of Citizenship and Culture and it's on
22 page 4 of the document, Municipal and Ontario
23 Governments, and it reads:

24 "All affected municipalities must be
25 notified as well as the Ministry of

1 Citizenship and Culture in all cases."

2 MS. BLASTORAH: That's in the EA

3 Document?

4 MR. TENAGLIA: That's in the approved

5 Class EA.

6 THE CHAIRMAN: Sorry, is it the one
7 before us or the one that's already approved?

8 MR. TENAGLIA: That's the one that's
9 already approved.

10 THE CHAIRMAN: Thank you.

11 MS. KLEER: Q. I have one further
12 question that relates to the undertaking earlier
13 regarding the Cemeteries Act.

14 If the Cemeteries Act applies, what
15 procedures are in place to contact the Ministry which
16 governs that Act, which is the Ministry of Consumer and
17 Corporate Affairs or Consumer and Commercial Relations?
18 I'm not sure what it's called now.

19 MR. PYZER: A. In honesty, I don't know.

20 Q. I'm asking that as part of the
21 undertaking.

22 A. Oh, okay.

23 THE CHAIRMAN: Well, that would be part
24 of the Act or its regulation; would it not?

25 MS. KLEER: Pardon me?

1 THE CHAIRMAN: That would be contained
2 within the Act or any regulations under the Act; would
3 it not?

4 MS. KLEER: Well, the Act doesn't
5 specifically identify procedures to notify that
6 Ministry except outside of territories -- sorry, except
7 inside of territories that are without municipal
8 organizations.

9 So I guess my question is: Generally,
10 does the Act apply, because if it does, then the
11 Ministry has to be contacted.

12 MS. BLASTORAH: I'm sorry, Mr. Chairman,
13 point of clarification. Again, I'm not familiar with
14 the Act or its regulations. I believe Ms. Kleer just
15 indicated that there are provisions outside of
16 municipally regulated areas and I would just point out
17 that I would think any situation where timber access
18 roads are being constructed would likely fall into that
19 category, they would not be in municipal areas.

20 MS. KLEER: That's what I am saying. I
21 guess I'm referring specifically to a section of the
22 Cemeteries Act that says: In a territory without
23 municipal organization any of the powers conferred upon
24 a local Board may be exercised by the Ministry, which
25 in this case is the Ministry of Consumer and Commercial

1 Relations.

2 So my question is: Will they be
3 notified? Is that a procedure that the Ministry has?

4 MS. BLASTORAH: Mr. Chairman, again, I
5 will make inquiries. I would just state for the
6 present time that whatever provisions are in the Act,
7 if the Act applies, will be followed.

8 MS. KLEER: All right, that's
9 satisfactory. I have no further questions at this
10 point.

11 THE CHAIRMAN: Thank you, Ms. Kleer.

12 MS. KLEER: I just have one point of
13 clarification.

14 Mr. McGibbon was concerned about his
15 calculation earlier and I had asked him to calculate
16 800 metres by 800 metres squared, so if it's a radial
17 calculation that is used in the U.S. forest, then our
18 158 hectare suggestion doesn't stand, but we're just --
19 that was just on the basis of 800 metres squared, and
20 may it stand.

21 THE CHAIRMAN: Which was 150 acres?

22 MS. KLEER: 152 hectares.

23 THE CHAIRMAN: Sorry.

24 MS. KLEER: Sorry, 152 acres.

25 THE CHAIRMAN: 152 acres. Okay. I guess

1 we will all note that for prosperity.

2 Thank you, Ms. Kleer.

3 I think we will adjourn now until 2:00
4 p.m. at which time we have approximately an hour, Ms.
5 Seaborn, or so?

6 MS. SEABORN: Perhaps a couple of hours,
7 but I don't think we will have to sit late into the
8 afternoon or evening to accommodate my
9 cross-examination.

10 THE CHAIRMAN: Very well. Thank you.
11 We will return at two.

12 ---Luncheon recess taken at 12:20 p.m.

13 ---On resuming at 2:05 p.m.

14 THE CHAIRMAN: Thank you, ladies and
15 gentlemen. Please be seated.

16 Ms. Seaborn, just before you start, I
17 don't know if anyone else had the opportunity to hear
18 the CBC regional news at one o'clock for Ontario, it
19 would seem to indicate that some workers at the
20 Whitefish Reserve have uncovered a burial mound at a
21 Pow-Wow site that is reputed to be over 1,000 years
22 old, and the Ministry of Culture and Citizenship -- or
23 Citizenship and Culture is busily doing their thing as
24 we speak.

25 MR. TUER: Does the Cemeteries Act apply?

1 THE CHAIRMAN: That wasn't brought up in
2 the newscast, but it may well be a question.

3 Anyway, sorry for the interruption. Ms.
4 Seaborn, we are ready for you.

5 MS. SEABORN: Thank you, Mr. Chairman.

6 I would like to begin by filing a number
7 of MOE interrogatories in connection with Panel 14
8 which have not been previously filed.

9 I will read the question numbers into the
10 record. Questions 4, 5, 9, 11, 13, 16, 17, 18, 19, 24,
11 and 26. And I would suggest, Mr. Chairman, we have one
12 exhibit number for this bundle.

13 THE CHAIRMAN: Okay. That will be
14 Exhibit No. 786.

15 MS. SEABORN: (handed)

16 THE CHAIRMAN: Thank you.

17 ---EXHIBIT NO. 786: MOE Interrogatory Question Nos. 4,
18 5, 9, 11, 13, 16, 17, 18, 19, 24,
and 26.

19 MS. SEABORN: Good afternoon, members of
20 the panel.

21 CROSS-EXAMINATION BY MS. SEABORN:

22 Q. My first questions are for you, Mr.
23 Ward. Mr. Ward, the undertaking that is described in
24 the Class Environmental Assessment consists of four
25 activities which are normally carried out in sequence,

1 and the first activity described is the provision of
2 access to the timber resource; is that correct?

3 MR. WARD: A. I believe so.

4 Q. And as compared to the activities of
5 harvest, renewal and maintenance, would you agree with
6 me that the greatest potential for any adverse impact
7 on water quality arises from the construction of a road
8 access system?

9 A. I'd agree with you.

10 Q. And in your witness statement you
11 indicate that based on experience and professional
12 judgment, the potential for undesirable effects on
13 aquatic habitat and water quality exists as a result of
14 the use, construction and maintenance of forest access
15 roads?

16 A. That's correct.

17 Q. And, Mr. Adamson, I believe your
18 direct testimony was to the effect that while some
19 impacts of road and water crossing construction are
20 inevitable, these impacts can be minimized through good
21 planning, good engineering and design and good
22 construction practices. Is that a fair summary of your
23 evidence?

24 MR. ADAMSON: A. Yes.

25 Q. And would it be fair to say that the

1 emphasis is placed on the prevention of impacts rather
2 than the mitigation of impacts after they occur? And
3 just to elaborate a little bit on that question, what
4 I'm suggesting is that the thrust is that there be good
5 front-end planning?

6 A. That's correct. Good front-end
7 design.

8 Q. And good front-end -- that would
9 encompass good engineering at the same time?

10 A. Yes.

11 Q. And good construction practices?

12 A. Yes.

13 Q. Now, two documents in particular have
14 been referred to throughout this panel as significant
15 to the access issue and these are the Environmental
16 Guidelines, which is Exhibit 683, and the Resource
17 Access Roads Policy and Implementation Strategies and
18 Guidelines which is the thick binder which is Exhibit
19 685; is that correct?

20 A. Yes, those are two of the documents
21 we're depending on.

22 Q. And for the purposes of MNR's
23 classification of the various tools that are available
24 to MNR in timber management planning, these are
25 documents that are identified as construction and

1 operational manuals?

2 A. The environmental guidelines are.
3 I'm not quite sure if the other document, whether it is
4 an operational manual or not.

5 Q. I won't spend time on it now. It's
6 my information from reviewing the EA and from the
7 evidence we heard in Panel 8 when we looked at the
8 classification of various guidelines, resource
9 environmental manuals and construction and operational
10 handbooks that the green binder, Exhibit 685, would be
11 one of the construction and operational manuals?

12 A. Fine.

13 Q. Okay. Could we have a look first at
14 Exhibit 683 which are the environmental guidelines.
15 And, Mr. Adamson, if you could turn to page 4 and that
16 is the introductory section.

17 A. Yes.

18 Q. The second paragraph on the left-hand
19 side of page 4, the paragraph reads that:

20 "Various environmental values should be
21 considered during the planning,
22 construction, maintenance and abandonment
23 of access roads and water crossings.

24 These include aquatic.."

25 And then water quality and fisheries are

1 identified. Do you see that?

2 A. Yes.

3 Q. So water quality is one of the values
4 that is to be considered in the planning, construction,
5 maintenance and abandonment of roads?

6 A. Yes.

7 Q. And the same thing with water
8 crossings?

9 A. Yes.

10 Q. And I also note at page 4 in the
11 introductory section on the right-hand side of the
12 page, the second last paragraph that:

13 "In many cases, implementation of the
14 recommendations does not require any
15 additional expenditure of money. In
16 fact, doing it right the first time is
17 often more economical in the long run
18 because it avoids costly mistakes that
19 may have to be rectified."

20 Do you see that?

21 A. Yes.

22 Q. And I suggest that your direct
23 testimony accords with this statement insofar as, in
24 your opinion, impacts can be minimized through good
25 planning and good construction practices?

1 A. That is correct. That is one of the
2 messages that we are trying to carry through all these
3 documents.

4 Q. And so doing it right the first time
5 is going to be both cost effective and should minimize
6 potential impacts?

7 A. I think so, yes.

8 Q. If you go over to the next page of
9 the guidelines, page 5, on the right-hand column on
10 page 5 under the Section 2.3: "Using this manual..."

11 A. Yes.

12 Q. The last full sentence on the
13 right-hand page says:

14 "In situations where mandatory standards
15 are inadequate to protect fisheries
16 habitat, water quality or other values,
17 appropriate good practice and mitigation
18 techniques must be selected and used to
19 ensure legislative standards and
20 requirements are met."

21 And the example that is given on page 6
22 is the reference to the Fisheries Act.

23 A. Yes.

24 Q. Now, Mr. Ward, I would like to ask
25 you a couple of questions about the application of the

1 Federal Fisheries Act.

2 THE CHAIRMAN: Well, just before you get
3 into that, Ms. Seaborn.

4 MS. SEABORN: Yes, Mr. Chairman.

5 THE CHAIRMAN: Mr. Adamson, or perhaps
6 Mr. Ward, what does that last sentence mean, in the
7 sense that, as I read it, where there are not mandatory
8 standards or the mandatory standards are inadequate,
9 you have to use other mitigation techniques in order to
10 ensure legislative standards and requirements are met.

11 If there's a legislative standard, that
12 would be mandatory in any case; would it not?

13 MR. ADAMSON: Yes. We didn't want to
14 indicate that by following the mandatory standards only
15 that meant automatically that all legislation was
16 complied with. There may be circumstances where things
17 in addition to those mandatory standards have to be
18 done for legislative reasons.

19 THE CHAIRMAN: But in a sense, they are
20 all mandatory?

21 MR. ADAMSON: Yes. Certainly, yes.

22 MS. SEABORN: I think, Mr. Chairman, you
23 have jumped ahead to the point I was about to make.
24 What I would like to do is file two pages from the
25 Fisheries Act and ask Mr. Ward a couple of questions

1 about the definitions of fish habitat pursuant to that
2 Act, if I may.

3 And, for the record, it's Sections 34 and
4 35 of the Federal Fisheries Act.

5 MR. WARD: Is that the recently revised
6 one?

7 MS. SEABORN: I have had this updated and
8 it's my information that this is the most recent
9 revision. Perhaps I will give you a copy and you can
10 let me know if my information is not correct.

11 MR. WARD: Okay.

12 MS. SEABORN: (handed)

13 THE CHAIRMAN: For the purposes of the
14 proceeding, do you want to exhibit the sections of this
15 Act just for convenience?

16 MS. SEABORN: Yes.

17 THE CHAIRMAN: Very well. These excerpts
18 from the Fisheries Act will be exhibited as Exhibit
19 787.

20 ---EXHIBIT NO. 787: Excerpts from Federal Fisheries
21 Act, Section 34 and 35.

22 MS. SEABORN: Q. Mr. Ward, are you
23 familiar with the Federal Fisheries Act?

24 MR. WARD: A. I am.

25 Q. And MNR administers the Fisheries

1 Act?

2 A. That's correct.

3 Q. I just want to have a look quickly at
4 Section 35.1 which is on the second page of the
5 excerpt. Now, Section 35.1 states that:

6 "No person shall carry on any work or
7 undertaking that results in the harmful
8 alteration, disruption or distruction of
9 fish habitat."

10 A. That's correct.

11 Q. And then at the top of the page:

12 "Fish habitat is defined for the purposes
13 of this section to mean spawning grounds
14 and nursery rearing, food supply,
15 migration areas on which fish depend
16 directly or indirectly in order to carry
17 out their life processes."

18 A. That's right.

19 Q. And would you agree with me that this
20 is a very broad ranging definition of fish habitat?

21 A. I would.

22 Q. And would you agree with me that this
23 definition would encompass the vast majority of water
24 bodies in the area of the undertaking?

25 A. Where fish are present.

1 Q. Yes.

2 A. Yes.

3 Q. And, in terms of your comments where
4 fish are present, would you agree with me that the Act
5 speaks in terms of fish habitat as opposed to sports
6 fish?

7 A. That's correct. The Act doesn't
8 differentiate between sport fish, commercial fish or
9 any other fish.

10 Q. And Section 35 speaks directly to
11 habitat protection as opposed to protection of specific
12 fish species?

13 A. That's right.

14 Q. And would you agree with me that in
15 administering the Act it would not be necessary to
16 identify then a fish species, you would just have to
17 identify whether or not there is fish habitat?

18 A. That's right, that fish are present
19 in that area.

20 THE CHAIRMAN: So there are no
21 circumstances you can think of where you could have
22 fish habitat but no fish?

23 MR. WARD: Well, certain times of the
24 year there may not be fish present, but I know in terms
25 of the Fisheries Act if an occurrence occurs or a

1 harmful alteration occurs, you don't have to have fish
2 at that time present, they could have been, you know,
3 spawning six months earlier in that area and it's still
4 fish habitat.

5 Like, intermittent streams, for example,
6 may be a case where there may not even be any water,
7 but at one time of the year it is fish habitat, so we
8 would still want to protect it under the Fisheries Act.

9 THE CHAIRMAN: What about a situation
10 where, say, it's a lake that has been subjected to acid
11 rain where there are no fish there or the last fish
12 supposedly is no longer there but there is still fish
13 habitat, were the lake cleaned up fish might come back?

14 MR. WARD: Well, that is a question that
15 is facing ourselves and the federal government right
16 now. We are in the process of implementing the Federal
17 Fishery Department's policy for the management of fish
18 habitat in Ontario. This came out in October, 1986.

19 I believe I mentioned this policy in
20 Panel 7, my previous evidence, and we have a memorandum
21 of intent I guess between Ontario and the federal
22 government on how to implement this policy and we are
23 looking at areas - to answer your question
24 specifically - where lakes are devoid of fish but it's
25 still fish habitat.

1 And the policy's main objective is to get
2 a net gain of fish habitat in Ontario. So we are
3 looking at areas that we can, you know, put fish back
4 into, so...

5 MS. SEABORN: Q. And Mr. Ward, just
6 returning to page 6 of the guidelines, and perhaps
7 following up on the Chairman's earlier question, I
8 gather that the reason why the example of the Fisheries
9 Act is given in the guidelines is that the Fisheries
10 Act, by virtue of its broad definition of fish habitat,
11 may require MNR to take steps to protect fish habitat
12 regardless of the contents of the guidelines
13 themselves?

14 MR. WARD: A. That's true.

15 Q. And would you agree with me that
16 anyone building a road, whether it was MTC or a
17 municipality or a private road, would have to take the
18 same measures as MNR takes to protect fish habitat for
19 the purposes of complying with the Federal Fisheries
20 Act?

21 A. That's correct.

22 THE CHAIRMAN: Sorry to interrupt, but
23 just one quick question. Is there concurrent
24 jurisdiction with respect to the federal agencies and
25 MNR to administer this Act? In other words, could

1 federal officials come into a particular lake and apply
2 this Act where MNR has, for whatever reason, declined
3 to do so?

4 MR. WARD: Yes, they can. Our
5 conservation officers are federal fisheries officers as
6 well.

7 THE CHAIRMAN: So it's really the same
8 people?

9 MR. WARD: Yes, but the Department of
10 Fisheries and Oceans has four fish habitat experts
11 based in Burlington that we use for advice and
12 proceeding with charges under the Fisheries Act. And
13 we actually have a referral process in place, when we
14 get into harmful alterations of fish habitat, that we
15 will notify the federal fisheries people, especially
16 when we are talking compensation, of trying to
17 create -- if habitat is altered or harmfully, you know,
18 destroyed in some way and we are looking at that
19 proponent compensating in achieving the objective, a
20 net gain of fish habitat. So we do have their
21 involvement there as well.

22 THE CHAIRMAN: Thank you.

23 MS. SEABORN: Q. Just following on from
24 that, Mr. Ward, I take it if another body building a
25 road such as a municipality, for example, was in

1 contravention of the Fisheries Act, MNR would have the
2 power to lay charges?

3 MR. WARD: A. Yes, they would.

4 Q. Mr. Adamson, I would like to turn to
5 the question of abandonment. And in your witness
6 statement and in your direct testimony you explain the
7 use management strategy of abandonment and the two
8 types of abandonment are physical abandonment and
9 natural abandonment; correct?

10 MR. ADAMSON: A. Yes.

11 Q. And in the case of physical
12 abandonment, there is a deliberate act to render a road
13 impassable; correct?

14 A. Not necessarily. There's a
15 deliberate act to take steps to prevent erosion and
16 sedimentation resulting from the gradual deterioration
17 of the road and those steps may include removal of
18 bridges or culverts.

19 MS. SEABORN: Excuse me for a moment, Mr.
20 Chairman. I just want to find a reference in Mr.
21 Adamson's direct testimony.

22 Q. Could you turn to page 210 of the
23 Panel 14 witness statement. Now, I just want to deal
24 for the moment with the definition of physical
25 abandonment just to make sure we are clear. At the top

1 of page 210 it says:

2 "Physical abandonment occurs when there
3 is a deliberate act to render a road
4 unusable by vehicular traffic."

5 MR. ADAMSON: A. Yes, I stand to be
6 corrected. That's the definition in the evidence, it's
7 also the definition on page 24 of the guidelines.

8 Q. Thank you.

9 A. What I was looking at when I
10 responded was page 11 of the guidelines.

11 Q. No, I understand that what you
12 mentioned about physical abandonment is in the
13 guidelines and we are going to come to how it works.

14 A. All right.

15 Q. I just wanted to deal with the
16 definition for a moment. And as opposed to physical
17 abandonment, natural abandonment is when the road is
18 left to deteriorate; correct?

19 A. Yes.

20 Q. And when a road is abandoned, whether
21 it's physically abandoned or naturally abandoned, no
22 road maintenance takes place; is that correct?

23 A. Yes, that's correct.

24 Q. And one of the effects of not
25 maintaining a water crossing is that it will eventually

1 wash out?

2 A. In the long term perhaps, but -- like
3 in a century, but there is many water crossings that
4 require no maintenance to perform satisfactorily. By
5 performing, I mean pass the water underneath them.

6 Q. There are various references in the
7 Environmental Assessment and in the guidelines
8 themselves to washout and let's just look at one for
9 example.

10 If you have a blockage of culverts or
11 ditches by debris and sediment, that can lead to
12 washouts and sedimentation?

13 A. Yes.

14 Q. And would you agree with me that if
15 you have sediment in water courses there is going to be
16 an effect on water quality? Perhaps Mr. Ward can
17 answer that.

18 MR. WARD: A. It's possible.

19 Q. Would you just turn to the
20 Environmental Assessment at page 60, which is Exhibit
21 4, and on page 60, the second paragraph says:

22 "The deposition of sediment in
23 water courses can adversely affect water
24 quality in several ways."

25 And then it goes on to describe the ways

1 in which water quality can be affected. Do you see
2 that?

3 A. I do, yes.

4 Q. And you would agree then that there
5 are effects on water quality as a result of
6 sedimentation?

7 A. Yes.

8 Q. And could you turn, Mr. Adamson, to
9 page 26 of the environmental guidelines and you will
10 see there is a picture on page 26 with a caption:

11 "Failure to maintain culverts and ditches
12 may lead to a road washout."

13 You'd agree with that?

14 MR. ADAMSON: A. Yes, it may lead to a
15 road washout.

16 Q. And could you turn to Exhibit 786
17 which is the bundle of interrogatories that I filed
18 this afternoon, and if you turn to Question 19.

19 A. Yes.

20 Q. And the question that we posed was:

21 "What percentage of the bridges and
22 culverts installed for water crossings on
23 forest access roads wash out within the
24 design lifetime?"

25 And the answer was that:

1 "This type of data is not available."

2 Then the answer went on -- goes on to

3 state:

4 "A recent survey in the northcentral
5 and northwestern regions shows that no
6 culverts which were designed using
7 methods recommended by the Ministry have
8 washed out to date due to flows exceeding
9 the capacity of culverts. No bridges
10 designed using current methods of
11 analysis have washed out."

12 And what I am interested in specifically
13 is the last sentence:

14 "However, the survey did indicate that
15 washouts have occurred in properly
16 designed culverts due to beaver activity
17 blocking the culvert, ice formation in
18 the pipe, and erosion of the fill around
19 the pipe."

20 Do you see that?

21 A. Yes, that is the response.

22 Q. And I would take it from this
23 response that while the goal of the Ministry in setting
24 the guidelines and applying the guidelines is to ensure
25 that there are good construction practices to minimize

1 impacts, there are still going to be natural situations
2 such as beaver blocking a culvert where you may end up
3 with a washout?

4 A. Yes, that's correct.

5 Q. Now, if we look at the mandatory
6 section of the environmental guidelines, there is
7 reference to standards that must be adhered to with
8 respect to abandoned roads and, in particular, at page
9 11 the statement is that:

10 "...on naturally abandoned roads will be
11 inspected at least once every three years
12 and more frequently where circumstances
13 such as abnormal rainfall warrant."

14 And then underneath:

15 "When a road is physically abandoned,
16 appropriate measures are to be taken to
17 prevent significant erosion and
18 sedimentation of waterbodies. These
19 measures may include the removal of
20 culverts and bridges and grading of
21 slopes to stable angles of the posts."

22 Now, in terms of the definitions that we
23 talked about earlier of naturally abandoned roads and
24 physically abandoned roads, the way the guidelines are
25 set up, as I understand them, is we were referred to

1 Section 5.11 for the definition of these terms?

2 A. Yes.

3 Q. And the definition of the terms
4 appears under the good practices section of the
5 guidelines; correct?

6 A. Yes.

7 Q. And if we turn to page 24 under the
8 good practices section for road abandonment, on the
9 left-hand column, the last paragraph. Do you see that?

10 A. Yes.

11 Q. And the good practices section says
12 that:

13 "In either case, abandonment should be
14 carried out in an environmentally sound
15 manner. Erosion and decay processes can
16 lead to sediment problems in the areas
17 of water crossings."

18 Now, in the case of a road that has been
19 physically abandoned, would you agree with me that in
20 order to prevent a detrimental environmental impact the
21 culverts and the water crossings should be removed?

22 A. Not necessarily. If I recall, the
23 good practice we included in the guidelines was that we
24 should remove those ones that have been an ongoing
25 maintenance problem. So when maintenance ceases it can

1 be expected it will be a continuing problem, but no one
2 will be correcting it.

3 Q. I am sorry, I didn't catch the last
4 comment.

5 A. The recommendation was to remove
6 water crossings that have been an ongoing maintenance
7 problem; in other words, beaver activity that has had
8 to be cleared out periodically. So it can be expected
9 when the maintenance ceases that the beaver will
10 continue working and eventually wash out the road.

11 There are other water crossings which can
12 remain in place and perform satisfactorily which
13 haven't required maintenance in the past and they
14 shouldn't require maintenance in the future.

15 Q. When you physically abandon a road,
16 that implies no maintenance; correct?

17 A. Physically abandonment, yes.

18 Q. That is part of the definition of
19 physical abandonment, is that there will be no
20 maintenance on that road?

21 A. Yes.

22 Q. And if you are going to physically
23 abandon a road by a means other than removing a water
24 crossing, say by ditching a road, then you would not be
25 able to get equipment down that road in order to remove

1 a water crossing further along the road. Would you
2 agree with that?

3 A. It would make it more difficult.

4 Q. Well, if you render the road
5 impassable under the definition of physical
6 abandonment, you wouldn't be able to get equipment down
7 there to remove a water crossing?

8 A. You could. You know, you could
9 restore the water crossing temporarily to get equipment
10 across and then come back and take it out again.

11 Q. But you wouldn't normally want to do
12 maintenance on a road that is physically abandoned?

13 A. That's right. These are roads that
14 the use doesn't justify continued maintenance so they
15 are abandoned, there is no further money spent on them.

16 Q. And before you physically abandon a
17 road, if you can -- if it's established that there is
18 going to be a potential for an adverse environmental
19 impact, would you agree that what you should do is go
20 in and remove that water crossing prior to the physical
21 abandonment?

22 A. Yes. That is essentially what the
23 mandatory standard says, appropriate measures are to be
24 taken to prevent significant erosion, sedimentation of
25 waterbodies. These measures may include removal of

1 culverts, et cetera. So that is our intent.

2 Q. And if a water crossing has been
3 identified as an area of concern pursuant to the Fish
4 Habitat Guidelines and, for whatever reason, the road
5 upon which that water crossing was situated was slated
6 to be physically abandoned, say, for example, by
7 ditching, would you agree that before you render that
8 road unusable the water crossing should be removed?

9 A. If it has a potential for causing
10 sedimentation and erosion that is going to enter the
11 waterbody, that may be a decision that is made for that
12 case.

13 MR. WARD: A. You have to look at every
14 situation on a case-by-case basis depending on what
15 values you want to protect downstream, and also you
16 have got to look at the crossing structure itself.

17 If it has been well stabilized and you
18 have vegetation growing all over the rubble and the rip
19 rapping and everything and it can probably handle some
20 flooding with no erosion occurring at all. So you have
21 got to look at those situations, you know, whether it
22 is actually going to cause an erosion problem or not or
23 whether it can withstand a flood.

24 Because that is one of the problems when
25 you start to make a decision to remove a culvert,

1 normally it's in a stabilized situation with lots of
2 vegetation and then when you remove it again you are
3 exposing that environment to another construction
4 activity with a chance for further erosion and
5 sedimentation going downstream. So it has to be a
6 case-by-case judgment.

7 Q. So in terms of your case-by-case
8 judgment I think, Mr. Ward, your testimony yesterday
9 was that all water crossings will become areas of
10 concern -- an area of concern if they fall within the
11 ambit of the Fish Habitat Guidelines.

12 A. Yes.

13 Q. Okay. So let's look at it from the
14 point of view of application of the Fish Habitat
15 Guidelines. You have a water crossing that is defined
16 as an area of concern, it's on a road that's slated for
17 physical abandonment, what I'm suggesting is that in
18 order to protect fish habitat and water quality,
19 wouldn't you agree with me that what you should be
20 doing is going in and removing those water crossings
21 prior to rendering the road impassable?

22 A. Again, like they would be flagged as
23 an area of concern, but we have to state what the
24 concern will be. Like, some -- that's for our planning
25 process. We flag all crossings we can see on a

1 1:50,000 topographical map and that initially becomes
2 an area of concern, but some of them are -- who are
3 less concerned with erosion and sedimentation than
4 others, say if you have a downstream spawning area,
5 it's going to be more sensitive to sediment, especially
6 bedload sediment than you would have with some other
7 habitat features.

8 So those are the kinds of decisions the
9 professional biologist in the field has got to make.

10 Q. With respect to washouts, Mr.
11 Adamson, you said that some water crossings could last
12 for a century; is that correct?

13 MR. ADAMSON: A. Yes. Like, if there is
14 nothing that's going to block the opening, I assume
15 that the water crossing would last until the steel pipe
16 corroded to the point that it would fall down. A
17 structure is not going to last for ever and ever.

18 Q. Right.

19 A. But a long term.

20 Q. And that's my point. If we start
21 with the proposition that eventually all water
22 crossings are going to wash out within a time frame,
23 then for the purposes of preventing any potential
24 adverse effects on water quality or fish habitat, you
25 would want to go in and remove them at the time of

1 physical abandonment because there is no maintenance on
2 those roads and you're not going to get in there again,
3 is my point.

4 A. Well, we don't know. Long term, a
5 hundred years, that could be a whole new forest growing
6 up.

7 And I think Mr. Ward's point is quite
8 correct, my experience in removing culverts, especially
9 under deep fields, is you create quite a significant
10 disturbance and you expose all that mineral soil to
11 erosion again, you know, where it's reasonably stable,
12 it's vegetated, things are stablized. That's the
13 environment and why change it if there is not a problem
14 for a hundred years.

15 Q. Well, what if the beaver comes along?

16 A. Well, if there is beavers in there
17 and that's the type of structure that they like to --
18 they're attracted to, then action would be taken.

19 Q. But you wouldn't always know that in
20 advance; would you?

21 A. I suppose not, habitat changes,
22 but...

23 Q. Right.

24 A. But as a mandatory standard I think
25 the way it's worded is appropriate. I don't think it

1 will be appropriate to say that all water crossings
2 must be removed period.

3 Q. In the case of physical abandonment,
4 I think the MNR policy in the resource access
5 strategies states that actually removing a water
6 crossing and culverts is often a preferred method of
7 physically abandoning the road; correct?

8 A. From the context of preventing
9 vehicular access, yes.

10 Q. So in many instances in order to
11 effect physical abandonment you would be removing a
12 water crossing in any event; is that correct?

13 A. We may. That's one method, yes.

14 Q. Okay. And what I'm suggesting is
15 that in situations where you decide to ditch a road or
16 effect some other form of physical abandonment because
17 of this potential of a problem in the future, that you
18 should go in and remove those water crossings now?

19 A. Well, that may be your view. Our
20 view is the mandatory standard that's written here
21 addresses significant problems, they'll be dealt with.
22 The others would be left in place.

23 THE CHAIRMAN: I think, Ms. Seaborn, we
24 are skating around in a circle. The Ministry's view is
25 that it should not be mandatory to remove all water

1 crossings at the time of abandonment, physical
2 abandonment. You may have a contrary view, or your
3 client may, but I think that's a matter of a differing
4 position.

5 MS. SEABORN: Yes. No, I accept that,
6 Mr. Chairman.

7 MR. ADAMSON: A further point I would
8 like to add. These mandatory standards were developed
9 through a lengthy process involving a lot of discussion
10 between the Ministry of Environment and the Ministry of
11 Natural Resources, and the final wording of what's in
12 the guidelines was agreed to by the two deputy
13 ministers.

14 MS. SEABORN: Well, Mr. Chairman, I'm not
15 not going to take issue with that and get in a position
16 of giving evidence on that. My client may have a
17 different view.

18 But, in any event, I understand your
19 position, Mr. Ward and Mr. Adamson, and that's fine.

20 THE CHAIRMAN: It may be a different
21 Deputy Minister.

22 MS. SEABORN: Q. Now, I want to have a
23 look at naturally abandoned roads briefly, Mr. Adamson.
24 On page 11 of the environmental guidelines again it
25 says that:

1 "Naturally abandoned roads will be
2 inspected at least once every three years
3 and more frequently where circumstances
4 such as abnormal rainfall warrant."

5 Correct?

6 MR. ADAMSON: A. Yes.

7 Q. And, again, that's a mandatory
8 provision?

9 A. Yes.

10 Q. And would you agree that some of the
11 reasons for water crossings washing out would be an
12 event such as beaver activity, blockage by debris and
13 spring freshet?

14 A. Yes.

15 Q. And spring freshet occurs annually?

16 A. Spring freshet occurs in the spring
17 time, it's a snow melt. Washouts can also occur from
18 heavy summer storms too, particularly on smaller
19 basins.

20 Q. And could you tell me what the
21 purpose is of the inspection that's contemplated on
22 page 11?

23 A. What is the purpose?

24 Q. Yes.

25 A. I guess it's to be aware of the

1 condition of the water crossing structures and to make
2 a decision if action should be taken or not, if there
3 is a safety hazard, or if there's environmental
4 concerns that warrants action.

5 Q. And there's the proviso that you may
6 inspect more often than three years where circumstances
7 warrant. And would an example of that be if a member
8 of the public gave you some information about a
9 particular water crossing?

10 A. Certainly.

11 Q. Okay. And would it be your position
12 that if an inspection reveals that a water crossing is
13 dangerously close to washout that that water crossing
14 would be removed?

15 A. We would have to assess the impacts
16 of the washout, how serious they would be, we would
17 have to assess the impact of removal of the crossing on
18 the users of the road, and we'd also have to obtain the
19 funding in the road maintenance budget to do the work.

20 Q. Okay. Well, just a couple of
21 questions arising from that answer. First of all, we
22 are dealing in a situation of natural abandonment, so
23 your prime consideration shouldn't be other users of
24 the road; should it?

25 A. Oh, these naturally abandoned roads

1 have many users. The recreational use of these roads
2 is large.

3 Q. I'm aware that people use them, but
4 by definition, because they're naturally abandoned,
5 people are -- there is no maintenance on those roads,
6 people use them at their own leisure as long as they
7 are open and there's no expectation of maintenance
8 along those roads?

9 THE CHAIRMAN: What does that have to do
10 with use though? I mean, in the sense that unless they
11 are gated or for some reason people are prohibited from
12 using them, they may be free to use them as an
13 unimproved road at their own risk, but it doesn't mean
14 they can't use them.

15 MS. SEABORN: No, I'm not suggesting
16 that, Mr. Chairman. What I'm suggesting is that if
17 it's a naturally abandoned road there would be, by
18 definition, no maintenance on that road. That was my
19 understanding of the definition.

20 MR. ADAMSON: That's right, maintenance
21 ceases.

22 MS. SEABORN: Q. So the general public
23 would use them, as you say Mr. Chairman, at their own
24 risk. What I'm suggesting is that if your inspection
25 reveals that there is a problem with a water crossing

1 in the sense that it's about to wash out, would you go
2 in and pull out that water crossing?

3 MR. ADAMSON: A. Not necessarily.

4 Q. And how about in the situation if
5 it's a water crossing that's defined as an area of
6 concern pursuant to the Fish Habitat Guidelines so
7 there was some implications for fish habitat and water
8 quality; in those circumstances would you take out that
9 water crossing because of the potential adverse
10 environmental effects that we've discussed earlier?

11 A. If, in the view of the biologist,
12 those effects were quite serious, I think action would
13 be taken, yes.

14 Q. Okay.

15 A. It may not necessarily be remove that
16 culvert, it may be replace it with a different
17 structure.

18 When we looked at the bridges two years
19 ago there is many abandoned roads we found unsafe
20 bridges on and we might say: Well, we'll just take
21 them out because they're abandoned roads, but for the
22 other users that are willing to drive over the
23 washboard and everything else, we replace bridges.

24 Q. But doesn't that mean that what
25 you're doing is maintenance on a naturally abandoned

1 road?

2 A. What we are doing, I guess, is taking
3 emergency action. In my direct evidence I talked about
4 where the maintenance funds are going and, yes, we
5 would be taking emergency action on what we consider to
6 be a naturally abandoned road.

7 THE CHAIRMAN: Mr. Adamson, without
8 getting into the liability questions, if you had an
9 abandoned road, naturally abandoned, and you posted
10 signs and whatnot saying: Abandoned road or road
11 closed or use at own risk--

12 MR. ADAMSON: Yes.

13 THE CHAIRMAN: --et cetera, without
14 indicating specifically that a bridge was about to
15 collapse if somebody went over it, would the Ministry
16 view its obligation to either take out the bridge or
17 render the bridge safe to pass?

18 MR. ADAMSON: I think we do depending on
19 the risks. If we really feel that someone's life could
20 be endangered by crossing that bridge, we'll either
21 take it out or replace it, and that could occur on an
22 abandoned road that we know the public are using.

23 THE CHAIRMAN: And that's a different
24 question really than the ones normally directed at
25 maintenance, that's directed at a -- the sole purpose

1 of taking that action is safety; would you consider
2 that to be the case?

3 MR. ADAMSON: That's correct, yes,
4 removal of a hazard on Crown land, yes, and that road
5 may not have seen a grader for five years and the
6 washboard might be that deep, but if we know people are
7 crossing that bridge we may take that action.

8 THE CHAIRMAN: Okay.

9 MS. SEABORN: Q. Just following on from
10 that for a moment, Mr. Adamson. What that tells me is
11 that in terms of abandoned roads there is a class of
12 roads out there that, in reading the environmental
13 guidelines, one might have thought were naturally
14 abandoned roads; i.e., no maintenance, but what you're
15 saying is that if there's heavy traffic on naturally
16 abandoned roads you may do some maintenance on those
17 roads?

18 MR. ADAMSON: A. It doesn't necessarily
19 have to be -- heavy traffic. In those circumstances
20 you find out what traffic is in there, and it may only
21 be six Indians that have a commercial fishing licence,
22 you know, and that's the nearest access to a lake.

23 Q. But my point is that by your
24 definition of abandonment, as soon as you are going in
25 there and doing some maintenance, that does not accord

1 with what is in your testimony as to what abandonment
2 means, because I thought we had established earlier on
3 that abandoned roads means unmaintained roads?

4 A. Yes, and they -- and what I term
5 maintenance are those routine activities of grading and
6 ditching and...

7 MR. MARTEL: But wasn't it your problem a
8 couple of years ago, why you started your whole survey,
9 was the amount of pressure raised by the public with
10 respect to bridges and culverts on many unused roads in
11 northern Ontario and the public absolutely demanding
12 that they be repaired otherwise someone was going to
13 get killed?

14 MR. ADAMSON: That's right. We may not
15 have any money to maintain that road, but that issue
16 gets raised, people are out there.

17 MS. SEABORN: Q. Well, let's just go
18 back to the issue again of removal of water crossings
19 on naturally abandoned roads.

20 You gave the example earlier on when we
21 were speaking of abandonment that if your regular
22 inspections led you to believe that there was chronic
23 beaver activity at a water crossing year after year,
24 you could see the problems at a culvert with beaver
25 activity, I think your evidence was that in those

1 circumstances you would know that there is a problem
2 there and if that road is going to be abandoned that
3 would be a situation where you should remove the water
4 crossing. Would you agree with that?

5 I'm talking about on an abandoned road,
6 you are not going to go in there and --

7 MR. ADAMSON: A. Yes, I think that --
8 yes, there may be action taken there to abandon that
9 road in an environmentally sound manner.

10 Q. Okay.

11 A. And the kind of thing I'm thinking of
12 is it may be appropriate to take out the water crossing
13 and leave the site in a condition that people could
14 ford across in it a four-wheel drive vehicle or
15 something like that.

16 Q. Okay. What I'm interested in is the
17 removal of the water crossing.

18 THE CHAIRMAN: But just going back to
19 this line of questioning again. If you know that
20 people use the road, you don't have any money to
21 maintain it, its use for timber management purposes is
22 no longer there, you are not harvesting in the area,
23 you are not renewing the forest or maintaining the
24 forest in that area, so you are prepared or the company
25 is prepared to abandon the road in the sense that they

1 won't spend more money to maintain it.

2 MR. ADAMSON: That's correct.

3 THE CHAIRMAN: But if you know that
4 people use it, nevertheless, to access some area of
5 wilderness for other areas such as hunting, fishing,
6 hiking, whatever, and if there isn't a major
7 environmental impact from not removing the bridge or
8 the crossing, from what I understand, if there is a
9 safety factor involved you will still repair it?

10 MR. ADAMSON: Yes.

11 THE CHAIRMAN: And you wouldn't take it
12 down in that case, I assume, because you know that it
13 is still being used, albeit not for timber management
14 purposes?

15 MR. ADAMSON: We may take it down, that
16 may be the decision, but those incidental uses can't
17 justify the cost of a new bridge.

18 THE CHAIRMAN: Okay. So then it boils
19 down to a cost/benefit analysis in terms of weighing
20 the benefits of occasional use as against the cost of
21 taking it down?

22 MR. ADAMSON: That's right. And I would
23 say that that would be as a last resort and also
24 it's -- the Ministry normally goes through a public
25 consultation process before they'd remove the bridge.

1 MS. SEABORN: Q. Okay. Mr. Adamson,
2 maybe I can just summarize this area. I think we've
3 agreed that if you have identified - and again I will
4 deal with it in terms of abandonment - if you've
5 identified a water crossing that has a potential to
6 wash out either through beaver activity or other
7 potential problems -- do you agree with that?

8 MR. ADAMSON: A. Yes, we have identified
9 a site.

10 Q. Okay. And you have a water crossing
11 that has become an area of concern as per application
12 of the fish guidelines, if there is the potential for
13 that to wash out, then you will either go in and remove
14 it or, in the case of abandonment where you know there
15 is a public out there that uses those abandoned roads,
16 you will repair it for their benefit; is that correct?

17 A. I can't say that's correct in all
18 cases, no.

19 Q. It seems to me that that is the
20 general theory. What you're saying is with respect to
21 abandoned roads: No, we don't always go in and remove
22 the water crossings because it may be there is a public
23 out there that we know uses those roads and there will
24 be an outcry if we remove the water crossing, what we
25 have to do is repair the water crossing; is that

1 correct?

2 A. Provided funds are available. You
3 know, we get a certain amount of funding for road
4 maintenance and it's spent on priority -- in a priority
5 manner.

6 Q. Right.

7 A. And the highest priority, as I
8 mentioned in direct evidence, was public safety and
9 warning people.

10 Q. And what I'm suggesting is that if
11 you have a water crossing that is environmentally
12 sensitive, has been identified through the area of
13 concern planning process as sensitive pursuant to the
14 Fish Habitat Guidelines, you know from inspection and
15 from past experience in the area that this particular
16 culvert may have a potential to wash out in the future,
17 that what you should be doing is prior to it washing
18 out you should be going in and either taking it out or
19 fixing it; is that correct?

20 A. That may be the strategy to deal with
21 that problem, yes, but I can't say it's done in every
22 instance.

23 Q. I'm not suggesting whether or not
24 it's done in every instance, what I'm suggesting is -
25 perhaps Mr. Ward can help -- that in terms of reducing

1 the potential impact on fisheries -- sorry, reducing
2 the potential on fish habitat or water quality, that
3 would be what you were striving for, you would want to
4 identify the sensitive water crossings and those would
5 be the water crossings that you would want to be
6 removing?

7 MR. WARD: A. That's correct, yes.

8 Q. Okay. Mr. Ward, would you agree that
9 if you had a series of water crossings on a road that
10 it may be that for environmental reasons - and again to
11 protect fish spawning or other sensitive fisheries
12 habitat -- you would have to remove more than one water
13 crossing?

14 A. That's possible.

15 Q. Mr. Tenaglia, I have a few questions
16 for you on tertiary roads. These roads may often cross
17 water courses?

18 MR. TENAGLIA: A. Yes.

19 Q. And, Mr. Adamson, there was evidence
20 yesterday confirming that the environmental guidelines
21 apply to the construction, maintenance and abandonment
22 of tertiary roads?

23 MR. ADAMSON: A. Yes.

24 Q. And at page 12 of the guidelines on
25 the left-hand column, the last sentence -- the second

1 last sentence midway through says:

2 "However, even low standard tertiary
3 roads have the potential for causing
4 significant harmful effects. The
5 practices described should be consulted
6 as a matter of course prior to and during
7 the management of access road projects."

8 Do you see that, Mr. Adamson?

9 A. Yes.

10 Q. And I believe the evidence was that
11 there is no maintenance on tertiary roads, generally?

12 MR. TENAGLIA: A. Usually not.

13 Q. And, Mr. Tenaglia, they are built for
14 short-term access, one to five years--

15 A. Yes.

16 Q. --normally? And, Mr. Adamson, would
17 you agree with me that the provisions of the guidelines
18 that we have been discussing in relation to abandonment
19 apply equally in the situation of abandonment of a
20 tertiary road?

21 MR. ADAMSON: A. Yes. I should mention
22 there in my experience tertiary roads are physically
23 abandoned much more frequently than other roads, and
24 quite often culverts are removed on tertiary roads or
25 temporary bridges are now being discussed and put in

1 that would be laid across a creek, they'll do their
2 work and take it out.

3 Q. Thank you. Mr. Tenaglia, this may
4 have been referred to in the evidence, but just a point
5 of clarification. Is the application for work permit,
6 which is Exhibit 695, is that required prior to the
7 construction of a tertiary road?

8 MR. TENAGLIA: A. Yes, it is.

9 Q. And so if a tertiary road crosses a
10 waterbody then a work permit would be required as well?

11 A. Definitely.

12 Q. Okay. And, Mr. Tenaglia, there has
13 been a considerable amount of discussion concerning the
14 use of forest access roads by members of the public
15 and, as I understand the evidence, forest access roads,
16 whether Crown, company or FMA are to be open to the
17 public generally?

18 A. Yes.

19 Q. And that policy is reflected in the
20 FMA agreements as well?

21 A. Yes, it is.

22 Q. And would you agree with me that
23 requiring access roads to remain open to the public is
24 a legitimate use by the public of those roads?

25 A. Generally speaking?

1 Q. Yes.

2 A. Yes, I would agree with you.

3 Q. And, as I understand the evidence,
4 the district manager has the power to close a road in
5 specific circumstances?

6 A. Correct.

7 Q. And would you agree with me that
8 there are certain costs associated with closing roads?

9 A. Direct costs?

10 Q. Yes.

11 A. There are direct costs. I don't
12 believe that they're significant, but there are costs.

13 Q. And, for example, there would be a
14 cost of gating, a cost of signage, a cost of
15 enforcement on the closed road?

16 A. Yes.

17 Q. And--

18 A. And monitoring.

19 Q. --cost of monitoring, and perhaps
20 even the cost of the decision-making process in the
21 first place in terms of deciding whether to close a
22 road, certain man hours involved in that decision?

23 A. That would all be blended in in the
24 planning process, yes.

25 THE CHAIRMAN: What is the policy with

1 respect to a forest access road during the time and in
2 the particular area where operations are being carried
3 out by a company or by the Crown?

4 MR. TENAGLIA: With respect to access to
5 the area, public access to the area?

6 THE CHAIRMAN: Yes. In other words, are
7 there not in some cases some very severe safety factors
8 to take into account when the heavy equipment is in a
9 concentrated area, the big trucks are rolling down the
10 roads fully loaded during the exact time of harvesting
11 operations to allow the public in unrestricted?

12 MR. TENAGLIA: On primary roads I think
13 that's probably one of the hazards -- or one of the
14 risks that a general public will take associated with
15 travelling on bush roads or forest access roads.

16 I don't know that there is a particular
17 policy relative to signing those roads; i.e., Drive At
18 Your Own Risk, or Caution, Extra Wide Loads or anything
19 like that.

20 THE CHAIRMAN: So it is not normal for
21 the Ministry to restrict access during certain periods
22 of operation on forest access roads?

23 MR. TENAGLIA: Not logging operations,
24 no, no. There certainly may be for safety reasons
25 during the hunting season, restrict hunting or

1 travelling through a particular area during the hunting
2 season if there's concentration of workers.

3 THE CHAIRMAN: Okay.

4 MS. SEABORN: Q. And, Mr. Tenaglia,
5 there would also be a cost associated with the issuance
6 of travel permits?

7 MR. TENAGLIA: A. A small cost.

8 Q. Thank you. Mr. Tenaglia, would you
9 agree with me that an ideal road is one with the
10 following characteristics:

11 First of all, it achieves its purpose in
12 terms of accessing timber, it is designed and
13 constructed to minimize environmental impacts, there
14 are no use conflicts associated with the location of
15 the road, and it can remain open for the public to use
16 thereby eliminating any costs associated with closing
17 the road.

18 Do you have any problem with that
19 concept?

20 A. No, I think we've got a lot of those
21 roads in the province.

22 Q. I'm sorry?

23 A. We have a lot of those kind of roads
24 in the province that meet those conditions.

25 Q. And, Mr. Pyzer, in your evidence you

1 referred to closed roads as perhaps one of the biggest
2 misnomers. Do you recall that testimony?

3 MR. PYZER: Yes, I do.

4 Q. And you talked a bit about approved
5 resource harvesters who are allowed to use closed roads
6 and you gave as an example bait fishermen, trappers and
7 some tourist operators?

8 A. That's correct. Generally not
9 tourist operators.

10 Q. Okay. In any instances do tourist
11 operators get these resource--

12 A. That's an interesting question
13 because--

14 Q. --permits?

15 A. --because usually the reason that
16 they're closed is to protect the tourist operator.

17 Q. In the case of a remote tourist
18 operator.

19 A. Yes, that's true. Usually the reason
20 it's closed is to protect a remote tourist operator and
21 quite often they are the first person in the door
22 wanting to know if they can use the road for their own
23 specific purpose.

24 In fact, I dealt with one within the last
25 couple of months where they wanted to bring a camera

1 crew down to film a television program for the United
2 States and the question was, instead of flying these
3 people in on the aircraft, could they drive in and
4 bring their television equipment and that sort of thing
5 down the road. And that's kind of the tough -- or
6 tough kind of decision to make.

7 And in that case we said yes they could,
8 but our conservation officers would be in on the water
9 and if we saw any one of those people with a fishing
10 rod in their hands they would be charged. And if,
11 therefore, the intent was to also fish as well as film,
12 they should fly in.

13 THE CHAIRMAN: Do the conservation
14 officers get to be in the movie?

15 MR. PYZER: They better not have.

16 MR. MARTEL: Could I ask a question. How
17 do you allow them to use their own road and say no to
18 the rest of the public though, doesn't that become a
19 problem for you?

20 MR. PYZER: Again, that's the dilemma we
21 looked at that. The intent -- the reason it was closed
22 was to try and maintain it as much as possible as a
23 remote tourist operation and the fact that they pleaded
24 a case that there is an exceptional circumstance, a
25 television crew once maybe every 10 or 15 years, it

1 didn't conflict with the reason why the road was
2 closed; in other words, to protect remote fishing.

3 In other words, these people weren't
4 fishing and we were prepared to give them a travel
5 permit with that proviso, that they not be allowed to
6 fish while they were there.

7 MS. SEABORN: Q. Mr. Pyzer, essentially,
8 as I understand it, your evidence was that the reason
9 why closed roads are a big misnomer is because in many
10 instances you provide resource harvesters with travel
11 permits; is that correct?

12 MR. PYZER: A. That's correct.

13 Q. Okay.

14 A. In fact, many of the roads -- if I
15 can just clarify one point. Some of the roads, they
16 are seasonally closed. In other words, if it was to
17 protect a fishery -- a lake trout fishery, the fact
18 that the season closes on September the 30th and that
19 was -- and it's to protect a remote tourist operation
20 based on, say, lake trout fishing, there is no reason
21 then to restrict resident hunters -- moose hunters
22 being in there in the fall.

23 So it could be a seasonal restriction
24 where residents could in fact be down that road hunting
25 moose. Again, it would depend on the reason that the

1 road is closed and who the users are that would like to
2 go down it and what period of year.

3 Q. And would you agree with me that when
4 a road is closed there is always a large public that is
5 excluded from using that road? And what I am thinking
6 of, for example, are the hunters, the anglers, the
7 canoeists, the naturlists, the non-native berry pickers
8 and hikers?

9 A. And your question was...?

10 Q. My question is: That is what I would
11 term the majority of the public, those users.

12 A. But what is the point, I missed the
13 point, I'm sorry. They can still be down -- if they
14 have hunted in that area and they have fished in that
15 area and they have picked berries in that area in the
16 past, they can still do that.

17 Q. No. Mr. Pyzer, what I am suggesting
18 is that if a road is closed--

19 A. Yes.

20 Q. --you said in your evidence that you
21 will, in circumstances, allow resource harvesters to go
22 down that road?

23 A. That's correct.

24 Q. Okay. And what I'm suggesting is
25 that resource harvesters are not the majority of the

1 population who may want to use that road, the majority
2 of the population tends to be the hunters, the anglers,
3 the hikers, the naturlists, the canoeists. Would you
4 agree with that?

5 A. Generally that's true.

6 Q. Okay. And if you have a situation
7 where a significant public wants to use a road that is
8 closed, then you are faced - you being MNR - you are
9 faced with a classic use conflict; is that correct?

10 A. That's correct.

11 Q. Now, you will recall some discussion
12 last - I am not sure if it was this week or last week -
13 concerning the figure of 6 per cent of closed roads.
14 Do you recall that?

15 A. I recall that, yes.

16 Q. Okay.

17 MS. SEABORN: Mr. Chairman, I have asked
18 that Mr. Mander provide you with Exhibit 412 which are
19 a bundle of Ministry of Environment interrogatories
20 from Panel 8.

21 THE CHAIRMAN: Yes, we have them.

22 MS. SEABORN: And I want to return
23 briefly to this issue of 6 per cent, and if you could
24 turn to Question 17 of Exhibit 412.

25 And I thought, Mr. Chairman, it might be

1 useful, because the number was referred to a couple of
2 times during Mr. Edwards' cross-examination, to look at
3 the specific question that we had asked in Panel 8.

4 Q. Do you have that in front of you, Mr.
5 Pyzer?

6 MR. PYZER: A. Panel No. 8, Question 17?

7 Q. Panel 8, yes.

8 A. Yes, I do.

9 Q. Now, Mr. Pyzer, would you agree with
10 me that on management units with a significant remote
11 tourism component, the figure of 6 per cent of the
12 roads closed is not particularly representative?

13 A. I would agree a hundred per cent.
14 Even in those areas where there isn't a remote tourism,
15 I have a hard time dealing with 6 per cent and knowing
16 what it means.

17 Q. Okay. And let's just have a look at
18 Question (b) of the interrogatory and we had asked:

19 "Over the past five years, what
20 percentage of the new primary and
21 secondary access roads in the
22 Domtar/Armstrong management units have
23 been gated?"

24 A. Mm-hmm.

25 Q. "Please give names of any gated

1 roads."

2 Now, the answer (b) tells us firstly

3 that:

4 "Five new primary access roads have been
5 constructed of which three are gated."

6 Correct?

7 A. That is what it says, yes.

8 Q. Okay. And then with respect to what
9 I would call the fourth road, the information is that
10 the road is not gated on the Domtar unit but it's gated
11 on the adjacent management unit; correct?

12 A. Yes, mm-hmm.

13 Q. So that that road is gated as well?

14 A. It would appear that way, yes.

15 Q. And then in terms of what I would
16 call the fifth road, the loop road, there is indication
17 that it will eventually be gated; correct?

18 A. That's correct.

19 Q. So on the Domtar unit it appears to
20 me that a hundred per cent of the primary access roads
21 are gated; is that correct?

22 A. I know nothing about this unit, but
23 what you have read is correct.

24 Q. Okay. According to the response?

25 A. I would have to assume -- somewhat

1 similar -- Mr. Tenaglia actually has some familiarity
2 with these roads. He may be able to clarify.

3 Q. It just appears to me - I don't want
4 to spend a lot of time on this - that we have got five
5 primary roads, five of which are -- four of which are
6 gated--

7 A. Yes.

8 Q. --and the fifth one is about to be
9 gated. To me that is a hundred per cent of the primary
10 roads are gated on that management unit?

11 A. Not necessarily, no. There could
12 be -- 95 per cent of the unit could already be accessed
13 and this could representative the last 5 per cent of
14 the access. So 95 per cent -- or 99 could be open and
15 we are talking about one per cent here. This could...

16 Q. Well, let's look at it this way. In
17 Question (a) when we asked for the 6 per cent figure,
18 we said:

19 "In the last three years, what percentage
20 of new primary and secondary access roads
21 have been gated? "

22 And the response we received was:

23 "6 per cent across the area of the
24 undertaking."

25 Now, the question in (b), I would suggest

1 that we are dealing with apples and apples, in the
2 sense that we again asked:

3 "What percentage of new primary and
4 secondary access roads in the Domtar unit
5 were gated?"

6 THE CHAIRMAN: But to get the picture,
7 don't you have to really know how many access roads
8 there are in the entire unit?

9 MR. PYZER: That's right.

10 THE CHAIRMAN: Period, not just when the
11 new ones were constructed.

12 MR. TENAGLIA: That's right. For
13 example, the Trail Lake Road - and it says the Trail
14 Lake -- a trail road is not gated at the
15 Domtar/Armstrong management unit. Well, there's ten
16 miles of road that people can drive before the gate.

17 And Ms. Seaborn is suggesting that that
18 gate -- or that road is gated so there is no roads
19 accessible to the public.

20 THE CHAIRMAN: But apart from that, I
21 take it that with many management units primary and
22 access roads have been constructed prior to the last
23 five years?

24 MR. PYZER: Well, in fact - and I am just
25 trying to guess - in Kenora District, if you have ask

1 that same question we would probably tell you a hundred
2 per cent, because most of the units has been accessed
3 and of those primary roads that we have been building,
4 because of the already accessed -- or because of the
5 access road system that is there, which is open, and
6 the fact we are just attaching onto and really
7 finishing up in certain areas and they may be closed.
8 Absolutely, it gives you a very distorted picture.

9 MS. SEABORN: Well, what I am suggesting
10 though, Mr. Chairman, was that there was some
11 indication that the 6 per cent figure was an
12 insignificant number of roads that had been closed and
13 what I'm pointing out is that the 6 per cent figure was
14 arrived at by looking at new primary and secondary
15 roads that had been constructed under the new
16 guidelines in the past three years.

17 The same basis was asked for: What
18 happened on the Domtar unit, and what I am suggesting -
19 and I think Mr. Pyzer has agreed with me in his earlier
20 answer - that in many management units the number of
21 roads that are gated will be considerably higher than 6
22 per cent and that 6 per cent is not necessarily
23 representative of the area of the undertaking.

24 MR. PYZER: Well, I am not sure if that
25 is what I did agree with. I guess -- and I think what

1 I said is that I have a very difficult time myself with
2 6 per cent because you really have to look at it on a
3 management unit basis to see which particular roads,
4 because it could be 1 per cent of road area or 1 per
5 cent being closed, which could in fact block off, if
6 you want to use those terms, much -- a substantial
7 portion.

8 So 1 per cent in terms of impact could be
9 very, very significant. Another case you could have 10
10 per cent of the roads closed or 20 per cent and the
11 area closed actually could be very insignificant and
12 yet you would draw the conclusion that the unit, with
13 10 per cent, that in fact the impacts were reversed.

14 And really it's more the number of lakes
15 and the areas that they are providing access into which
16 is the critical thing.

17 MR. TENAGLIA: And, Mr. Chairman, this
18 particular unit, the Domtar/Armstrong management unit,
19 is a rather unique area and that is the area that I
20 showed you on the caribou zone of the Nipigon District
21 Land Use Guidelines where commercial tourism was a
22 primary use and that is why there was a heavy or a
23 heavy intended use of gates.

24 MS. SEABORN: Q. And that's --

25 MR. TENAGLIA: A. So it's rather

1 atypical.

2 Q. And, Mr. Tenaglia, that was my point.
3 If you look at areas where there is a heavy tourism
4 use, would you agree with me that you are going to find
5 a higher proportion of roads gated than you would in
6 other areas of the area of the undertaking where there
7 is not as heavy tourism use?

8 A. That is possible.

9 MR. PYZER: No. No.

10 MR. MARTEL: Two answers.

11 MR. TENAGLIA: In some situations
12 obviously, but not necessarily gates. There is other
13 use management -- use management controls to protect
14 remote tourism and they don't have to be gates.

15 MS. SEABORN: Q. Okay. And in the
16 definition that I was provided in the answer to the
17 interrogatory, MNR said on response No. (a):

18 "MNR's interpretation of your term gated
19 is closed to public use which includes
20 such measures as gating, ditching and/or
21 signage under the authority of the Public
22 Lands Act."

23 THE CHAIRMAN: Well, panel, unless we are
24 missing something, I don't place any real significance
25 in the number 6 per cent unless you know at least two

1 things: The total number of roads which are open or
2 closed and, even going further than that, the total
3 proportion of the area which is closed off to access if
4 there is a gate on a particular road but a portion of
5 that road is open.

6 MR. PYZER: That's correct.

7 THE CHAIRMAN: And unless you know those
8 two variables you can't really, in my view, ascertain
9 whether 6 per cent is effectively a large amount, a
10 small amount, or any amount, it's useless to have a lot
11 of relevance to. The central question is: What area
12 can or cannot be accessed.

13 MS. SEABORN: All I am suggesting, Mr.
14 Chairman, is that I think there was a mistaken
15 impression left on the record that the number of roads
16 closed within the area of the undertaking, since the
17 new planning process has gone into effect and since the
18 tourism guidelines have gone in too effect, was an
19 insignificant percentage.

20 THE CHAIRMAN: Only 6 per cent.

21 MS. SEABORN: I am suggesting that it's
22 not 6 per cent, and what I am suggesting is that to
23 leave an impression on the record that it is a small
24 number of roads within areas where there are a number
25 of tourist operators would not be a fair impression to

1 be on the record.

2 THE CHAIRMAN: That's probably correct,
3 but even more so than that, it doesn't matter whether
4 it's a small number of roads or not, it really matters;
5 would you not agree, as to what percentage of the area
6 is or is not accessed.

7 Is that not the key question, the access
8 to the area in percentage terms?

9 MR. PYZER: Yes.

10 THE CHAIRMAN: As opposed to percentage
11 terms applied to the number of roads actually gated?

12 MR. PYZER: Yes. You could have a road
13 ten miles long and if you gate the last mile and if it
14 was the only road into Lake Nipigon as an example, you
15 have blocked off total access to Lake Nipigon versus a
16 road that is 10 kilometres long, totally blocked off
17 that leads to a 50-acre pond.

18 Now, one you have blocked off 10
19 kilometres; the other half, the impacts are entirely
20 different.

21 MS. SEABORN: Mr. Chairman, I just have
22 one more brief area to deal with and I think I can be
23 finished in a very short few minutes.

24 THE CHAIRMAN: Okay. We might as well
25 continue until you are done.

1 MS. SEABORN: Mr. Chairman, I would like
2 to file now an excerpt from Volume 1 of Panel 15, it's
3 a draft access plan and I have a few questions of
4 clarification with respect to this plan for Mr.
5 Tenaglia.

6 I advised Ms. Blastorah yesterday that I
7 would be referring to this document so that Mr.
8 Tenaglia would have an opportunity to review it, and I
9 would like to file the excerpt at this time.

10 (handed)

11 THE CHAIRMAN: Very well. The excerpts
12 of this plan will be exhibited as No. 788.

13 ---EXHIBIT NO. 788: Excerpts from draft timber
14 management plan for Lac Seul
Forest.

15 MS. SEABORN: Q. Mr. Tenaglia, this is
16 an excerpt from the draft timber management plan for
17 the Lac Seul Forest?

18 MR. TENAGLIA: A. This is pages 335 to
19 350 of Document 15?

20 Q. That's correct.

21 A. Witness statement 15. My
22 understanding is these are a summary of comments
23 made -- summary of comments made by district staff,
24 regional staff and main office staff of a very
25 preliminary draft timber management plan.

1 Q. And so these are comments on what I
2 would call the draft access plan; is that correct?

3 A. You can say that, but I would want to
4 emphasize, indications were that this was a very
5 preliminary, poorly prepared draft timber management
6 plan.

7 Q. Well, if you turn to page 334 of what
8 is now Exhibit 788 - which, Mr. Chairman, should be the
9 first page that the Board has - you see in the
10 left-hand column 4.13.2, access plan.

11 A. Correct.

12 Q. Now, the way the table is set up is
13 that there is a wide margin for comments; correct?

14 A. Correct.

15 Q. What I am interested in, Mr.
16 Tenaglia, could you turn to page 335.

17 A. Yes.

18 Q. Do you see the heading Berme Lake
19 Road.

20 A. Yes.

21 Q. And it says -- a comment besides
22 Berme Lake Road is:

23 "Access trap - red pine will be assessed
24 early and a trap may not be the most
25 effective - consider gating, posting or

1 access traps on tertiary roads."

2 Now, what is your understanding?

3 THE CHAIRMAN: Is that assessed early or
4 accessed yearly?

5 MS. SEABORN: I believe it's -- I read it
6 to be accessed -- that red pine will be accessed yearly
7 as opposed to assessed yearly.

8 THE CHAIRMAN: Early is what you first
9 said.

10 MS. SEABORN: Did I? I apologize.

11 THE CHAIRMAN: Yes. Okay.

12 MS. SEABORN: Q. Mr. Tenaglia, what is
13 your understanding of the term access trap?

14 MR. TENAGLIA: A. My understanding of
15 that is it's the terminology that was used in this
16 particular plan. I think it is being used in the
17 northwestern region, it's the same as a berm, anything
18 to control access.

19 I stand to be corrected, but I think
20 whoever is going to present evidence on this particular
21 package will -- can address that more specifically.

22 Q. Would an access trap include a sign?

23 A. Again, I am not too sure what that
24 term really means.

25 Q. Can anyone else on the panel tell me

1 what an access trap means? Mr. Pyzer?

2 MR. PYZER: A. I have never seen the
3 term before.

4 Q. Okay.

5 MR. WARD: A. Just a couple of examples
6 for you that I am familiar with or one that -- they may
7 pull a culvert on a tertiary road or on a water
8 crossing to prevent access.

9 Another technique is, in terms of on wet
10 grounds, you have winter access for logging but you
11 know the road is impassable in summer when most of the
12 angling pressure would occur, so that would be putting
13 a road through a so-called access trap.

14 So those are a couple of examples that I
15 believe that this term refers to.

16 Q. Can the panel advise me if there is
17 anywhere within MNR's documents a working definition of
18 an access trap? Is this something that -- I take it
19 this is something that is not normally used, this
20 terminology?

21 MR. TENAGLIA: A. Well, it's new to me.
22 I don't recall ever seeing it in either the EA Document
23 or timber management planning manual or any glossary.

24 Q. No, I didn't find it either, which is
25 why I raised the question with you, Mr. Tenaglia, since

1 you are on this panel.

2 MS. SEABORN: I don't think, Mr.
3 Chairman, it's necessary to go through this page by
4 page, but in my reading of what is now Exhibit 788, I
5 see the term access trap scattered throughout the
6 document, and what I would appreciate is an undertaking
7 from Mr. Tenaglia to make inquiries and advise me
8 whether I am correct that there is no working
9 definition that exists within the Ministry for the term
10 access trap prior to Panel 15 presenting its evidence?

11 MS. BLASTORAH: Mr. Chairman, I hesitate
12 because of the last comment there, prior to Panel 15
13 evidence?

14 This is, as Ms. Seaborn indicated, an
15 excerpt from the Panel 15 witness statement -- or
16 statement of evidence rather, and I can advise the
17 Board that Panel 15 will be addressing this.

18 And a working definition prior to that, I
19 don't know the purpose of that, but certainly this is
20 material that is going to be covered by Panel 15 and
21 will be explained.

22 THE CHAIRMAN: Okay. Well, can you just
23 ensure -- I think it would be sufficient, Ms. Seaborn,
24 if Ms. Blastorah would ensure that somebody on Panel 15
25 can at least indicate what access trap means in the

1 context of this document, if not in the context of a
2 working definition that they are now using.

3 MS. BLASTORAH: I can advise the Board
4 that the intention is to have the panel address that
5 issue, Panel 15 that is.

6 MS. SEABORN: I will wait with bated
7 breath, Mr. Chairman.

8 Q. Mr. Tenaglia, you made a comment a
9 couple of moments ago that interested me. In your
10 opinion, since we will not have you back on Panel 15,
11 why do you think this plan is poorly prepared?

12 MR. TENAGLIA: A. It's not necessarily
13 my opinion, it was what someone indicated to me
14 regarding this plan and in just looking at the number
15 of comments, that is --

16 THE CHAIRMAN: The someone being someone
17 involved in the preparation of this plan?

18 MR. TENAGLIA: No, someone involved in
19 reviewing the plan.

20 THE CHAIRMAN: Okay.

21 MR. TENAGLIA: And I think you just have
22 to look at the nature of the comments and would
23 indicate, just the sheer number of comments would
24 indicate there is problems with it.

25 MS. SEABORN: Thank you.

1 Those are all my questions, Mr. Chairman.
2 Thank you, members of the panel.

3 THE CHAIRMAN: Thank you, Ms. Seaborn.

4 Well, ladies and gentlemen, we are going
5 to adjourn for the day and be ready to commence with
6 Dr. Ritter and Mr. Kingsbury tomorrow.

7 Prior to announcing when we will start
8 tomorrow, which we will get to in a moment, the Board
9 wants to advise the parties that we have instructed Mr.
10 Mander to give an indication to the representatives of
11 OFAH, who are going to commence with their
12 cross-examination on Monday of this panel when we start
13 at one, to complete their cross-examination by the end
14 of Tuesday. And we have instructed the Ministry to be
15 prepared to re-examine -- commence their re-examination
16 Wednesday morning, and to commence with the direct
17 evidence of Panel 15 Wednesday afternoon.

18 We are again concerned over the length of
19 time that it is taking to put this case in and we are
20 going to take whatever measures we can to speed things
21 up, to the extent that we can.

22 We definitely hope to be in a position to
23 complete the direct evidence with respect to Panel 15
24 prior to rising for the interruption occasioned by the
25 hearing in Dryden on the 21st and we are going to

1 ensure that we are well into Panel 15 next week instead
2 of wasting any hearing time next week to start the
3 direct evidence the week after.

4 Now, with respect to the commencement
5 tomorrow. As we indicated earlier, this week we want
6 to attempt, if at all possible - hopefully it will be
7 possible - to adjourn for the week early Friday morning
8 in time to catch, I think it's the 11:15 plane out in
9 the morning.

10 With that in mind, we are suggesting a
11 fairly early start tomorrow and, Ms. Blastorah, do you
12 see any problem with starting at 8:00 a.m. tomorrow?

13 MS. BLASTORAH: I believe my
14 understanding is that Dr. Ritter is coming in this
15 evening and I believe Mr. Kingsbury is coming in fairly
16 late but at some point this evening. I believe he gets
17 in around 11:30 or something, so...

18 THE CHAIRMAN: Well, if you can get in
19 touch with him earlier have him have a nap on the plane
20 and I think we will try and start at 8:00 a.m.
21 tomorrow.

22 MS. BLASTORAH: Oh, Mr. Chairman, I might
23 just ask when Mr. Hanna is expected?

24 THE CHAIRMAN: I would assume he's
25 expected in tonight at some point because in any event

1 we would have--

2 MS. BLASTORAH: He will be here.

3 THE CHAIRMAN: --indicated that we would
4 have been starting no later than nine tomorrow. So I
5 would assume he would have to come in tonight.

6 MS. BLASTORAH: Yes:

7 THE CHAIRMAN: I believe Mr. Hanna only
8 has approximately one hour--

9 MS. BLASTORAH: I believe so.

10 THE CHAIRMAN: --left with this panel in
11 any event. If for some reason he isn't here, then
12 perhaps NAN can go first and Mr. Hanna second.

13 THE CHAIRMAN: Ms. Swenarchuk?

14 MS. SWENARCHUK: Mr. Chairman, with
15 respect then to cross-examination on Panel 15, is it
16 possible to have a clear indication of whether you will
17 expect the commencement of cross-examination before the
18 break for the Dryden hearing?

19 THE CHAIRMAN: It really depends on where
20 the parties are. Now, if we are near the end -- sorry,
21 if the end of the direct examination comes close to
22 when we are expected to rise on Thursday of the
23 following week, no, we would probably not commence the
24 cross-examination.

25 If, for some reason, we have two or three

1 days in there, or two days, then there is a possibility
2 we may start cross-examination. Again, it may be
3 interrupted by a week in Dryden, but so what.

4 We are not talking a lengthy break, like
5 a summer vacation or something like that. From time to
6 time parties may just have to have cross-examination
7 interrupted and be under the rules applicable to
8 cross-examination during that interruption.

9 Again, we want to try and move this
10 hearing along and not needlessly lose days. So I guess
11 the answer is, if you are first on, be prepared.

12 MS. SWENARCHUK: I am not, I follow the
13 industry, but...

14 THE CHAIRMAN: Right.

15 MS. SWENARCHUK: Is it still the
16 Ministry's expectation that it will be about four days
17 or --

18 MS. BLASTORAH: That is my understanding.
19 Having spoken to Mr. Freidin I believe he anticipated
20 four days.

21 THE CHAIRMAN: All right. But under the
22 rules we indicated last week, the next party on be
23 prepared to adjust accordingly if in fact Mr. Freidin
24 finishes earlier.

25 And I take it, Mr. Cassidy, you would be

1 prepared to go whenever Mr. Freidin finishes if we want
2 to proceed with cross-examination at that time?

3 MR. CASSIDY: That's correct.

4 THE CHAIRMAN: Thank you.

5 MS. SEABORN: Mr. Chairman, just on that
6 note, I think I will put on the record now that I
7 believe Mr. Campbell will be doing the
8 cross-examination on behalf of MOE.

9 He would be very reluctant to go before
10 any other parties, given that this is the infamous
11 Panel 15, and I would just like to state that on the
12 record, that he will have trouble getting instructions
13 from our client to allow us to fill in extra time in
14 front of other intervenors.

15 THE CHAIRMAN: Well, the Board is going
16 to make it quite plain, as best we can, that we expect
17 all parties to follow in the order in which they are
18 expected to present their evidence, barring some
19 emergency or some unusual circumstance, and to keep a
20 monitoring watch on where we are in the proceedings.

21 You can contact Mr. Mander or check with
22 the 1-800 number where we put that information on file,
23 or check with your colleagues, or do whatever you have
24 to do to keep yourselves up to date, but when you are
25 reached you will be expected to present your evidence

1 or present your cross-examination at that point in
2 time.

3 If you aren't ready to go, there is every
4 good chance in the future that you will just be skipped
5 for that panel and we will not come back afterwards.

6 MS. KLEER: I just want to put on the
7 record at this point that both David Hunter and myself
8 will not be available October 10th as we have a
9 provincial offences court trial scheduled for that day.

10 THE CHAIRMAN: Well, okay. We will --
11 you know, again if it's -- there will be occasions when
12 a slight delay or readjustment will be necessary and,
13 again, we will try and have other parties accommodate
14 in those circumstances so we don't lose hearing time.

15 In the case of the Ministry of the
16 Environment, I think it is in their interest and the
17 Board's interest that their order of presentation be
18 preserved. They are coming after all of the parties,
19 in the Board's view, for a particular reason and,
20 consequently, it is not necessarily going to be that
21 party that switches places. But that doesn't mean that
22 some of the other parties can't, amongst themselves,
23 alter the order of presentation somewhat if, for some
24 reason, you are unable to be here on a particular day.

25 Again, we would expect that kind of

1 accommodation. We would ask counsel to arrange that
2 the best you can without having to have the necessity
3 of the Board intervene. But we are not going to put up
4 with any more the situations where we lose hearing time
5 because parties, for whatever reason, are unavailable
6 to proceed.

7 In those cases where we feel that you
8 should have been ready to proceed, you aren't, no
9 accommodation was made, I think in the future you will
10 simply lose your turn for that panel.

11 Okay. We will adjourn until tomorrow at
12 8:00 a.m.

13 Thank you.

14 ---Whereupon the hearing adjourned at 3:40 p.m., to be
15 reconvened on Thursday, September 7th, 1989,
16 commencing at 8:00 a.m.

